International Protective Services, Inc. *and* United Government Security Officers of America, Local 46. Cases 19–CA–26325, 19–CA–26373, and 19–CA–26473

July 15, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

These consolidated cases arise in the context of a strike by security guards providing protection for United States Government buildings in Alaska. The main issue presented by the General Counsel's exceptions is whether the strike constituted protected activity under the National Labor Relations Act (NLRA). We agree with the judge's finding that the strike was not protected by the NLRA, as discussed below. The judge additionally dismissed (with one exception) all of the allegations that the employer of the security guards, International Protective Services, Inc. violated Section 8(a)(1), (3), and (5) of the NLRA prior to and after the strike.[1] We agree with all of these findings by the judge for the reasons set forth in his decision, except for one: we reverse the judge's dismissal of the allegation that the Respondent violated Section 8(a)(5) and (1) of the NLRA by failing to furnish the Union with information relevant and necessary to its role as bargaining representative of the security guards. We address, in turn, the Union's strike and the request for information.[2]

Factual Background

1. Security requirements at the Alaska Federal buildings

The factual background is fully set forth in the judge's decision and is summarized here. The Respondent, International Protective Services, Inc., provided security guard services for United States Government buildings in Anchorage, Alaska, pursuant to a contract with the General Services Administration (GSA). These buildings house the Federal courts, and offices for the Federal Bureau of Investigation, U.S. Attorney, Environmental Protection Agency, Internal Revenue Service, and other Federal agencies**.** Several of these Federal agencies housed in the Alaska Federal buildings were the targets of security threats from time to time. Heightened security measures had been instituted at the Alaska Federal buildings and Federal buildings nationwide following the bombing of the Federal building in Oklahoma City, Oklahoma.

The Respondent's security guards were stationed at the entrances to certain of the Alaska Federal buildings. The guards carried firearms and were required to be licensed to do so. The judge found that the Respondent's contract with GSA mandated further "stringent" requirements for the qualification and hiring of the security guards, including, inter alia, prior "arrest authority" from law enforcement experience, and first aid certification. The guards additionally received training in the operation of an X-ray machine and magnetometer, which devices had been installed as part of the increased security measures introduced after the Oklahoma City bombing. The guards were required to screen entrants to the Federal buildings, and their belongings, using these detection devices.

The Federal Protective Service (FPS), the law enforcement and security adjunct to GSA, is responsible for overall Federal building security at the Alaska Federal buildings, and for investigating and ensuring that the Respondent satisfied its contractual obligations to provide security guards with the required qualifications. FPS also provided security officers at the Alaska Federal buildings.

2. The Union's strike

The Union, United Government Security Officers of America, Local 46, was the collective-bargaining representative of the Respondent's security guards at the Alaska Federal buildings. During the latter half of 1998 and early 1999, the Respondent and the Union were unsuccessful in their attempt to negotiate a collective-bargaining agreement. On March 10, 1999,[3] the Union informed GSA that a strike was "imminent within the next few weeks" and that the strike "will occur at the most opportune time" for the Union. On March 12, GSA initiated a conference call with representatives of the Union, Respondent, and FPS to discuss the safety of the Federal buildings in the event of a strike. GSA representatives inquired of the Union whether and when a strike would commence. The Union evaded answering directly, indicating only that there "may or may not be a strike." GSA representatives emphasized to the Union that its overriding concern was to protect lives and prop-

[1] No exceptions were filed to the judge's finding that the Respondent violated Sec. 8(a)(3) by delaying the rehire of employee Phillip Relich.

[2] On Sept. 12, 2000, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The General Counsel filed exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified herein, and to adopt the recommended Order as modified and set forth in full below.

[3] All dates hereafter are in 1999.

erty at the Federal buildings in the event of a strike. The judge found that the Union nevertheless "thwarted" the GSA's effort to "ascertain any details regarding the threatened strike."

On March 14, the Union conducted a strike vote authorizing Union President Charles Reed to conduct a strike "at an appropriate time suitable" to Reed. Reed testified that he was given authority to call a strike anytime over the next 2-month period. A strike threatened by Reed on March 23 was narrowly averted. Several security guards balked at striking at that time because of their security concerns. According to one guard, one of "the building[s] was very busy and there were fifty or more visiting military personnel in the building."

On the morning of April 21, the Union faxed a letter to the Respondent setting forth certain contract demands, and stating that the Union "must receive a signed & notarized affirmative response from you by 1100 hours, 04–21–99 Alaska time, to avoid the pending work stoppage." The Union commenced a strike at the Anchorage Federal buildings at approximately 12 noon on April 21.[4]

According to the uncontradicted testimony of Joseph Sturrup of FPS,[5] "GSA and FPS personnel were concerned about the possibility of a strike, particularly during the months of March and April," because the anniversary of the Oklahoma City Federal Building bombing was approaching, and "there were several other ominous anniversaries of infamous individuals in March and April . . . [T]his is the time when the majority of bomb threats are received." Thus, security at the Alaska Federal buildings is tightened during the months of March and April, and security guards are reminded to be sensitive to the increased security risk.

Discussion[6]

The strike was not protected by the NLRA

The general rule under the NLRA is that employees have the right to strike for the purpose of mutual aid and protection. "The Act protects the right of employees to engage in concerted activities, including the right to strike without prior notice. *NLRB v. Erie Resistor Corp.*, 373 U.S. 221 (1963); *Montefiore Hospital* [*& Medical Center v. NLRB*, 621 F.2d 510 (2d Cir. 1980), cert. denied 465 U.S. 1065 (1984)]." *Bethany Medical Center*, 328 NLRB 1094 (1999).

The right to strike is not without limitation, however. Both the Board and the courts recognize

> that the right to strike is not absolute, and Section 7 [of the NLRA] has been interpreted not to protect concerted activity that is unlawful, violent, in breach of contract, or otherwise indefensible. *NLRB v. Washington Aluminum Co.*, 370 U.S. 9, 17 (1962). . . . The Board has held concerted activity indefensible where employees fail to take reasonable precautions to protect the employer's plant, equipment, or products from foreseeable imminent danger due to sudden cessation of work. *Marshall Car Wheel & Foundry Co.*, 107 NLRB 314 (1953), enf. denied 218 F.2d 409 (5th Cir. 1955).

Bethany Medical Center, supra at 1094. Accordingly, under these well-established principles, the test of whether the strike by the security guards lost the protection of the NLRA is not whether the Union gave the Respondent adequate notice of its strike,[7] because such notice is not required under the NLRA.[8] Nor is the test whether the Union's strike resulted in actual injury**.** Rather, the test of whether the strike by the security guards here lost the protection of the NLRA is whether they failed to take reasonable precautions to protect the employer's operations from such imminent danger as foreseeably would result from their sudden cessation of work. *Bethany Medical Center*, supra; *Vencare Ancillary Services*, 334 NLRB 965, 971 (2001).

The judge concluded that the Union's strike was not protected by the NLRA because it exposed the Federal buildings and their occupants to foreseeable danger. The judge based his conclusion on the Union's course of conduct beginning with its March 10 strike threat and culminating in its ultimate commencement of the strike on April 21. The judge found that the Union during this period evinced "total disregard" for the security of the Federal buildings by attempting "to capitalize on the element of surprise" and that the Union's April 21 strike was in fact "designed" to compromise the security of the Federal buildings and their occupants. We have carefully

[4] The Respondent's security guards at Federal buildings in Juneau and Fairbanks, Alaska, who were included in the bargaining unit represented by the Union, were not involved in the strike.

[5] Sturrup, who worked for FPS as the onsite representative of the GSA contracting officer, was responsible for overseeing GSA's contract with the Respondent.

[6] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[7] The judge found that the April 21 strike was called without notice to the Respondent, and that the Union gave notice of the strike to FPS on the morning of April 21.

[8] The sole limited notice requirement under the NLRA is that expressly provided by Sec. 8(g) for labor organizations at a health care institution. See, e.g., *East Chicago Rehabilitation Center v. NLRB*, 710 F.2d 397 (7th Cir. 1983), cert. denied 465 U.S. 1065 (1984). We accordingly disavow the judge's statement that "it is incumbent" upon a union representing security guards to give the employer "sufficient specific advance notice" of a strike.

reviewed the record evidence and find that the judge's conclusion that the strike was not protected is fully supported by his key factual findings.

The judge commenced his analysis by examining the March 12 conference call concerning the importance of ensuring the safety of the Federal buildings in the event of a strike. The judge found that the Union responded to GSA's inquiries on this subject "with vitriolic invective and outrage at GSA's involvement in this matter." The judge further found that the Union destroyed a tape recording it had made of the conference call because it presented in explicit detail the "total disregard" evinced by the Union for the interest of GSA and the Respondent in maintaining security at the Federal buildings in the event of a strike. The record thus shows, in the words of the judge, that the Union "was not the least concerned about the Federal buildings or their occupants."

The judge next examined the strike threatened for March 23, which was narrowly averted. The judge found that three security guards at the FBI building had expressed unwillingness to strike on that date because of their belief that it would pose a major security risk, as the building was hosting a conference of some 50 law enforcement and military officials. The judge observed that Union President Reed failed to allay these guards' concern with assurances that they were not expected to leave their posts unguarded. Rather, the judge found that Reed angrily chastised the security guards, admonishing them that "you don't run fucking union business." The judge found further that Reed gave no instructions to guards that they were not to abandon their posts until relieved by replacements. The judge effectively credited testimony of a security guard that Union President Reed would schedule the strike at "the most inopportune time for [Respondent] and FPS . . . when FPS officers were not available" to fill in for striking guards. The judge thus found, and we agree, that "the Union, through Reed, who had been given sole discretion to call a strike at the most opportune time, was willing to compromise the security of the buildings and their occupants" in furtherance of the Union's agenda.

The judge then focused on the April 21 strike. The judge found that again Union President Reed failed to instruct the security guards not to walk out on strike on April 21 if their posts were left unguarded. The judge specifically discredited Reed's contrary testimony as "untrue and self-serving."[9]

The record thus supports the judge's finding that on April 21 the Union was willing to compromise the security of the Federal buildings and their occupants by post abandonment. We accordingly agree with the judge that the Union failed to take reasonable precautions when exercising its right to strike to protect the Federal buildings and their occupants from "such imminent danger as foreseeably would result from their sudden cessation of work." *Bethany Medical*, supra, 328 NLRB at 1094. As discussed above, this is the correct standard under Board precedent for determining whether concerted activity is indefensible. Id; *Vencare Ancillary Services*, supra, 334 NLRB at 971.

The judge found further that, not only did the Union fail to take such reasonable precautions, the Union in fact affirmatively "attempted to capitalize on the element of surprise," knowing that it was very difficult to quickly assemble qualified replacement guards who were licensed to carry firearms, competent to operate X-ray machines and magnetometers, and in possession of the additional qualifications that GSA, FPS, and the Respondent were required to ensure. The judge found that indeed the Union's April 21 strike was "designed" to compromise the security of the Federal buildings and their occupants. We have reviewed the record evidence as a whole and agree with the judge's findings.

There can be little doubt, as the judge observed, that the Respondent's security guards were entrusted with critical responsibilities for the protection of persons and property. Further, as noted above, the safety of the Federal buildings was at greater risk during the months of March and April because of the anniversary of the Oklahoma City Federal Building bombing and "several other ominous anniversaries of infamous individuals." Security guards were reminded to be sensitive to the increased security risk. Thus, at a time of heightened vulnerability of the Alaska Federal buildings, the Union intentionally sought to compromise public safety. In sum, the Union's misconduct went beyond a failure "to take reasonable precautions" within the meaning of *Bethany Medical*; the judge's fully supported factual findings establish that the Union recklessly intended to place the Federal buildings and their occupants at risk.

Because the Union failed to take reasonable precautions to protect the employer's operations from foreseeable imminent danger and essentially flouted the requirement to do so, we agree with the judge that the Union's strike was not protected by the NLRA,[10] and that

[9] The General Counsel has excepted to this and other credibility findings by the judge. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[10] The Board's decision in *Federal Security, Inc.*, 318 NLRB 413 (1995), enf. denied 154 F.3d 751 (7th Cir. 1998), relied on by the Gen-

the Respondent thus did not violate the NLRA by terminating the employees who participated in the unprotected strike.[11]

The Union's information request

The security guards expressed concern both to the Respondent and the Union regarding the benefits provided them under the Respondent's interrelated 401(k) pension plan and health and welfare medical plan. The judge found that these plans were "complex and not readily understandable" and were a topic of discussion in the parties' negotiation for a contract. By letter dated February 26, Union President Reed made the following request for information to the Respondent:

> Please consider this letter as the Union's official request for a full and accurate accounting of all Health and Welfare and 401K [sic] funds received and distributed for each employee in our union bargaining unit. I am also requesting that you provide me with a copy of both plans including all benefits, options, and all other important information and descriptions.
>
> We have requested this information several times in the last year to no avail. I will expect to receive this information from you, not later than ten (10) days following receipt of this letter.
>
> If you have any questions, please call me.

The Respondent never responded to the Union's request for information.

It is axiomatic that an employer has an obligation to furnish to a union, on request, information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967). It is well settled that information related directly to the wages, hours, and other terms and conditions of employment, such as pension and medical benefits, of bargaining unit employees represented by a union is presumptively relevant to the union's role as collective-bargaining representative and must be furnished upon request. See, e.g., *Deadline Express*, 313 NLRB 1244 (1994); *Washington Beef, Inc.*, 328 NLRB 612, 618 (1999) (401(k) plan and health and welfare benefits); *Maple View Manor*, 320 NLRB 1149 (1996), enfd. mem. 107 F.3d 923 (D.C. Cir. 1997) (health and retirement plans). An employer has a duty to timely furnish such relevant information absent presentation of a valid defense. *Woodland Clinic*, 331 NLRB 735, 736 (2000).

The Respondent does not dispute the relevance of the requested information and that it failed to respond to the request. The judge nevertheless dismissed the allegation that the Respondent unlawfully failed to furnish the Union with relevant information, citing the Respondent's belief that employees' 401(k) account information was confidential; that the account information was in the possession of the 401(k) plan administrator rather than the Respondent; and that the Union's delay in bargaining negotiations foreclosed discussion of this issue. We reverse the judge's finding.

The Union requested two distinct items in its February 26 request: (1) a copy of the plans; and (2) an accounting of all health and welfare and 401(k) funds received and distributed for each unit employee.[12] The judge did not specifically pass on the former information request, regarding which the Respondent makes no claim of confidentiality or claim that the information was not in its possession. The Respondent has failed to present any valid defense to its duty to provide the Union with such relevant information, and we accordingly find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to furnish the Union with a copy of the plans.[13]

Turning to the request for employees' account information, the Board is required under *Detroit Edison v. NLRB*,[14] when dealing with a union request for relevant information that is asserted to be confidential by the employer, to balance a union's need for the information against any "legitimate and substantial" confidentiality interests established by the employer. *Pennsylvania Power Co.*, 301 NLRB 1104, 1105–1106 (1991). Further, a party refusing to supply information on confidentiality grounds has a duty to seek to bargain toward an accommodation between the union's information needs and the employer's justified interests. Id. at 1105–1106;

eral Counsel in his exceptions, is distinguishable from the instant case. In *Federal Security*, the Board adopted the judge's finding that the Union gave the respondent sufficient advance notice of the walkout to ensure security. 318 NLRB at 421. Further, there was no finding in *Federal Security* that the union's conduct was designed to compromise security. Because the Board's decision in *Federal Security* is distinguishable, we need not reach the issue of whether that decision continues to be viable.

[11] Because the strike was not protected by the NLRA, we need not pass on whether it was an economic or an unfair labor practice strike. It was neither. We likewise need not pass on the judge's dicta in fn. 39 concerning the legal ramifications of a hypothetical finding that the strike was protected.

[12] The Respondent made a single contribution for each employee, which could be applied, at the employee's selection, either to the medical plan or the 401(k) plan.

[13] Although the Respondent argues in its brief to the Board that a "description" of the plans was included in a draft collective-bargaining agreement, the Respondent does not claim that it provided the Union with the plans. We accordingly cannot agree with the dissent that the Respondent in fact furnished this information to the Union.

[14] Supra, 440 U.S. 301.

Metropolitan Edison Co., 330 NLRB 107 (1999). As the D.C. Circuit has explained:

> An employer is not relieved of its obligation to turn over relevant information simply by invoking concerns about confidentiality, but must offer to accommodate both its concern and its bargaining obligations, as is often done by making an offer to release information conditionally or by placing restrictions on the use of that information.

U.S. Testing Co. v. NLRB, 160 F.3d 14, 20 (D.C. Cir. 1998), enfg. 324 NLRB 854 (1997). The Respondent here made no effort to bargain to accommodate the Union's interest in seeking relevant information. Indeed, it did not respond at all to the information request. The Respondent's legitimate confidentiality concerns do not justify its failure to respond to the Union's request for account information.

Further, the Respondent was not privileged to ignore the request because the account information was not in its direct possession but was with the plan administrator. The Board has explained that an employer has a duty to supply relevant requested information which may not be in its possession, but where the information likely can be obtained from a third party with whom the employer has a business relationship.[15] The record shows that the Respondent was aware that employees were having difficulty obtaining statements of their personal 401(k) accounts from the plan administrator via the toll-free "800" telephone number provided to them by the Respondent, and that the Respondent's president personally contacted the plan administrator to correct this deficiency. The Respondent, by its own conduct, thus recognized an obligation to seek to obtain employee account information from the company the Respondent itself had engaged to oversee its benefit plans.

Finally, we cannot agree with the judge and our dissenting colleague that it was the Union's delay or other bargaining conduct that prevented resolution of the request for account information. Rather, the record plainly establishes that it was the Respondent who never replied to the Union's request, thereby foreclosing any avenue of discussion and accommodation.[16] The Union was under no duty to reiterate or clarify its unambiguous information request.[17]

For these reasons, we find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to respond to the Union's request for employee 401(k) account information, rather than attempting to bargain over an accommodation for the provision of this information. The appropriate remedy is to order the Respondent to bargain regarding the conditions under which the Union's need for relevant information can be satisfied with appropriate safeguards protective of the Respondent's confidentiality concerns. *Metropolitan Edison Co.*, supra, 330 NLRB at 109.

ORDER[18]

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, International Protective Services, Inc., Torrance, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees.

(b) Refusing to bargain in good faith with the Union in an attempt to reach an accommodation of interests in response to the Union's request for relevant information that the Respondent considers confidential.

(c) Delaying the rehire of employees because of their refusal to provide written statements critical of the Union's tactics.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

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[15] See *Firemen & Oilers Local 288 (Diversy Wyandotte)*, 302 NLRB 1008, 1009 (1991); *Public Service Co. of Colorado*, 301 NLRB 238, 246 (1991); *United Graphics*, 281 NLRB 463, 466 (1986).

[16] The record clearly shows that, contrary to the dissent, the Respondent had absolutely no intention of satisfying the Union's information request *without regard to the Union's bargaining posture*. Thus, the asserted "bad-faith bargaining" by the Union recited by the dissent did not even commence until 2 full weeks following the Union's request for information. The lack of a response of any kind during this period by the Respondent to the Union confirms that the Respondent had no intention of even attempting to comply with the request. Further, the Respondent's president explicitly conceded in his affidavit in this proceeding, which he read into the record at the hearing, that his position was that the Union was not entitled to the requested information without a collective-bargaining agreement in effect.

[17] *Good Life Beverage Co.*, 312 NLRB 1060 (1993), relied on by the judge, is distinguishable. In that case, the respondent promptly responded to the union's information request, stated legitimate confidentiality concerns, and agreed to discuss the information request at the parties' next bargaining session, which never occurred because of the union's conduct.

[18] We have modified the judge's recommended Order to reflect the violations found, to provide for mailing of the notice to employees because the Respondent's contract to provide guard services has expired, and to accord with our decision in *Ferguson Electric Co.*, 335 NLRB 142 (2001). We further shall substitute a new notice to comport with the violations found and to accord with our recent decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001).

(a) Furnish the Union with a copy of the Respondent's health and welfare and 401(k) plans, as requested by the Union in its letter dated February 26, 1999.

(b) Bargain in good faith with the Union regarding its request for information concerning all health and welfare and 401(k) funds received and distributed for bargaining unit employees, and thereafter comply with any agreement reached through such bargaining.

(c) Make Phillip Relich whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of the judge's decision.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful delay in rehiring Phillip Relich, and within 3 days thereafter notify Phillip Relich in writing that this has been done and that the unlawful delay in rehiring him will not be used against him in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, duplicate and mail at its own expense copies of the attached notice marked "Appendix,"[19] on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, to all employees employed by the Respondent at any time since February 26, 1999.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

CHAIRMAN BATTISTA, DISSENTING IN PART.

I agree with my colleagues, for the reasons set forth in the majority decision, that the Union's strike was not protected by the NLRA, and that the Respondent did not violate the NLRA by terminating the employees who participated in the unprotected strike. Contrary to the majority, however, and in agreement with the judge, I find that the Respondent did not unlawfully fail to provide the Union with requested information.

The Union requested a copy of the Respondent's health and welfare and 401(k) plans applicable to unit employees. The judge noted the testimony of Respondent's president, Sam Karawia, that "during the course of bargaining he provided [Union director] White with copies of the plans." The judge credited this testimony of Karawia. Thus, the plan information was furnished to the Union. Accordingly, the majority errs in finding that the Respondent violated the Act by failing to provide the Union with a copy of the benefit plans.

The majority further errs by finding that the Respondent violated the Act by failing to furnish the Union with an accounting of all health and welfare and 401(k) funds received and distributed for each unit employee. Rather, the record clearly shows that, following its information request, the Union commenced a course of unlawful bargaining which suspended the Respondent's duty to bargain, including its duty to provide the information.[1]

The Union made its information request on February 26, 1999.[2] Beginning on March 12, the Union obstructed the bargaining process by imposing conditions on continued negotiations, and rebuffed the Respondent's attempts to bargain, as follows:

- The Respondent, during the March 12 conference call, requested a Federal mediator to aid negotiations; the Union replied by stating that "maybe [it] would negotiate with a mediator and maybe not, and maybe [it] would get back to the Respondent and maybe it wouldn't;"[3]
- The Union sent the Respondent a letter dated March 16 entitled "Conditions of Negotiations" which stated that the Union would only meet with the Respondent if certain "conditions and time restraints are agreed to" including the Union's economic demands;
- The Respondent replied by letter dated March 22 objecting to the Union's conditions but nevertheless stating the Respondent's willingness to continue negotiations;
- The Union by letter dated April 4 reiterated its previous conditions and stated that it was ready to "complete negotiations" only if the Respondent agreed to the Union's conditions;

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[1] See *Double S Mining*, 309 NLRB 1058 (1992); *Nassau Insurance Co.*, 280 NLRB 878 fn. 3 (1986).

[2] All dates are in 1999.

[3] I am not suggesting that there was an obligation to have a mediator. I am relying only on the fact that the Union was equivocal as to whether it would get back to the Respondent with a response.

- The Respondent by letter dated April 19 repeated its interest in negotiating an agreement without pre-conditions;
- The Union replied by letter dated April 21 again presenting its conditions, including wage demands, that the Respondent must agree to before negotiations could resume.
- The Respondent replied by letter dated April 21 again expressing its willingness to bargain. On that very day the Union answered the Respondent's offer to continue bargaining by initiating its unprotected strike.

My colleagues assert that Respondent could have responded to the information request between February 26 (date of demand) and March 12 (date of commencement of Union's obstruction of bargaining). However, it is clear that an employer needs a reasonable period of time in which to respond. This is particularly so where, as here, the information is voluminous, the request raises confidentiality concerns, and some of it is in the hands of a third party. In my view, the evidence does not establish that Respondent was dilatory in the period from February 26 to March 12.[4] And, as discussed above, the Union's obstructionist tactics began on March 12.

Finally, my colleagues point to the Respondent's legal position that it did not have to supply some of the information. Even if it took that position, that would not excuse the Union's bad-faith bargaining. Clearly, the absence of meetings was because the Respondent would not acquiesce to the Union's improper conditions, not because of a lack of information.

In sum, as the judge correctly found, the record clearly establishes that the Respondent was willing and desirous of continuing negotiations, but the Union continually rebuffed the Respondent. The record further shows, and again the judge found, that the Union was bargaining in bad faith by conditioning additional bargaining on agreement with its economic demands.[5] The majority fundamentally errs by finding the Respondent in violation of its bargaining obligation to furnish the Union with relevant information, when in fact it was the Union's conduct, rather than the Respondent's, that obstructed the bargaining process.

[4] Indeed, there is no allegation that a delay from February 26 to March 12 would be unreasonable.

[5] See, e.g., *Patrick & Co.*, 248 NLRB 390, 392 (1980), enfd. mem. 644 F.2d 889 (9th Cir. 1981); *Lustrelon, Inc.*, 289 NLRB 378, 379 (1988), affd. mem. 869 F.2d 590 (3d Cir. 1989).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees.

WE WILL NOT refuse to bargain in good faith with the Union in an attempt to reach an accommodation of interests in response to the Union's request for relevant information that we consider confidential.

WE WILL NOT delay the rehire of employees because of their refusal to provide written statements critical of the Union's tactics.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with a copy of our health and welfare and 401(k) plans, as requested by the Union in its letter dated February 26, 1999.

WE WILL bargain in good faith with the Union regarding its request for information about all health and welfare and 401(k) funds received and distributed for bargaining unit employees, and WE WILL comply with any agreement reached through such bargaining.

WE WILL make Phillip Relich whole for any loss of earnings and other benefits resulting from the discrimination against him, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful delay in rehiring Phillip Relich, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful delay in rehiring him will not be used against him in any way.

INTERNATIONAL PROTECTIVE SERVICES, INC.

*Martin Eskenazi, Esq.,*for the General Counsel.
Joan E. Rohlf, Esq. (of Guess & Rudd, Anchorage, Alaska), for the Respondent.
Charles F. Reed, of Eagle River, Alaska, for the Union.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice a hearing in this matter was held before me in Anchorage, Alaska, on January 11, 12, and 13, 14 and February 1, 2, 3, and 4, 2000. The charges in the captioned cases were filed on January 25, February 26, and April 26, 1999, by United Government Security Officers of America, Local 46 (the Union). Each charge was amended on various dates after its initial filing date. Thereafter, on August 31, 1999, the Regional Director for Region 19 of the National Labor Relations Board (the Board) issued an order consolidating cases, consolidated complaint and notice of hearing alleging violations by International Protective Services, Inc. d/b/a International Services, Inc. (Respondent or ISI) of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). The Respondent, in its answer and amended answers to the complaint, duly filed, denies that it has violated the Act as alleged.

The parties were afforded a full opportunity to be heard, to call, examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the General Counsel (General Counsel) and counsel for the Union. Upon the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a California corporation with offices and places of business in several States, including an office in Anchorage, Alaska, where it is engaged in the business of providing security services to the United States Government and other entities. In the course and conduct of its business operations the Respondent annually provides services to various facilities within the State of Alaska operated by the United States Government (an entity over whom the Board would assert jurisdiction but for its exempt status) in excess of $50,000. It is admitted and I find that the Respondent is, and at all material times has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted and I find that at all material times the Union is and has been a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. The Issues

The principal issues in this proceeding are whether the Respondent has violated Section 8(a)(1), (3), and (5) of the Act by discharging striking security guards, by imposing unlawful conditions upon the rehire of one security guard, and by failing to provide the Union with certain requested health and welfare and/or 401(k) information.

B. The Facts

1. Background

The Respondent is in the business of furnishing security and related services to various entities of the United States Government as well as to non-Government employers. It maintains its administrative offices and principal place of business in Torrance, California. In about August 1996, it contracted with the Government Services Administration (GSA) to provide armed security guards for seven Federal buildings in Alaska. Five of the buildings are located in Anchorage, Alaska, and are commonly known as the Federal Building, the Federal Building Annex, the Old Federal Building, the IRS Building, and the FBI Building; the two other Federal buildings are located in Fairbanks and Juneau, Alaska, respectively.

The contract between GSA and ISI (the GSA Contract) is a 4-year contract containing annual "options" for each of the 4 years. The contract was initially awarded for the contract year August 1, 1996, through July 31, 1997, with four 1-year option years. Option III was the 4th year of the contract. The option process is for the purpose of providing an established period, prior to August 1 of each year, for agreement upon contract modifications, such as, for example, renegotiating the amount to be paid to the Respondent as a result of the Respondent's increased costs, including labor costs. Thus, it is essential that the Respondent know what its labor costs will be so that it can negotiate this increase with GSA prior to the start of each succeeding contract year.

On November 25, 1997, the Union was certified by the Board as the collective-bargaining representative of the Respondent's employees in the following unit which, at that time, consisted of about 45 or 50 employees:

> All full-time and regular part-time guards, employed by the Employer who provide security services for offices of the United States Government located in Anchorage, Fairbanks, and Juneau; excluding all office clerical employees, professional employees, managerial employees, temporary employees, casual employees, substitute employees and supervisors as defined in the Act.

For reasons not contained in the record it was not until June 2, 1998, some 7 months following the certification, that Edwin White, director, northwest region of the Union, who maintains his office near Tacoma, Washington, wrote to the Respondent stating that it was providing "official notification" that it was prepared to negotiate a labor agreement.

On June 9, 1998, the Respondent's vice president of operations, Richard DeLong, who works out of the Respondent's principal office in Torrance, California, suggested that negotiations commence as soon as possible. Receiving no response from White, DeLong again wrote White on June 19, 1998, and again on June 26, 1998, renewing his request. DeLong's interest in negotiating the contract as soon as possible resulted from the fact that any proposed collective-bargaining agreement, particularly contract wage rates, had to be submitted for ap-

proval of GSA within the prescribed GSA contract extension period.

It appears that sometime after June 26, 1998, White and the Respondent's president, Osama (Sam) Karawia, commenced negotiations. Negotiations took place solely by telephone and fax. Karawia testified that the only issue of any consequence was the Union's insistence that the unit employees, who were then earning $11.09 per hour, be given the same wages as the court security guards who worked in some of the aforementioned Federal buildings. Thus, the Respondent's security officers provided security for each of the buildings and the occupants of the buildings, while the court security officers, who were not covered by the GSA contract and were earning approximately $23 per hour, provided security specifically for the various courts and court personnel located within some of the Federal buildings.

Karawia explained to White that whatever wage rate was agreed to during negotiations between the parties would have to be approved first by the Department of Labor and then by GSA, and that he could never justify an excessive wage increase of approximately $12 per hour to the Department of Labor; rather, a series of reasonable wage increases would have to be incremental over a period of years. Karawia told White that he was willing to negotiate a reasonable wage increase that he believed he could justify to the Department of Labor. Karawia also warned White that the window of opportunity for any wage increase whatsoever was narrowing, as the deadline for submitting a proposed collective-bargaining agreement to GSA, including wage increases, was fast approaching. White kept insisting on a wage rate of $23 per hour.

On July 24, 1998, DeLong wrote a letter to White explaining that, "[a]s you are aware, the Option III for this contract begins August 1, 1998." The letter continues as follows:

> As of yesterday, July 23, 1998, our contracting officer informed us that the deadline for providing a signed CBA [collective-bargaining agreement] has come and gone. This is a serious problem. Sam Karawia is making every effort to obtain an extension; however, there is no guarantee that one will be granted.
>
> . . . .
>
> I feel we should complete our negotiations with the understanding that all financial increases will be on hold until the next option or new contract. The only exception would be if GSA does allow an extension.

No extension was granted by GSA and thereafter the parties continued their telephonic negotiations from their respective offices. Only White bargained on behalf of the Union and DeLong and Karawia bargained on behalf of the Respondent. No negotiations were face to face, and proposals were transmitted by facsimile or by mail. Indeed, Karawia testified that the first time he met White face to face was sometime after the strike began on April 21, 1999 (infra).

The Union's local president, Charles Reed, a security guard employee of the Respondent, handled local union matters, and did not engage in negotiations.

The Respondent received a contract proposal from White on August 3, 1998. In this contract proposal the Union proposed that the hourly rate for security guards be immediately increased from $11.09 per hour to $17.76 per hour, and thereafter by an additional 3.25-percent increase for each ensuing contract year beginning with the 1999 contract year. DeLong replied by letter dated August 6, 1998, advising, inter alia, as follows:

> As to being able to have this CBA become the wage determination, I am concerned that we are too late. The contracting officer has told us that CBA will not be considered until the next option.
>
> All negotiations will be based on the premise that any final aspects will be submitted prior to the next option and renewal and not the present option which began on August 1, 1998. I will read the proposal you provided and get back to you.

White wrote three letters in reply,[1] apparently accusing the Respondent of attempting to interfere with the employees' right to select a collective-bargaining representative, and DeLong replied on August 25, inter alia, as follows:

> Mr. White, please understand that ISI has many employees represented by unions, as we as an employer do not concern ourselves one way or the other in regards to whether an employee wishes to be represented by a union.
>
> While I do not share your positive attitude about obtaining any financial changes in this contract year, I certainly do [not][2] want to obstruct your efforts.

On September 24, 1998, White wrote a vitriolic letter to GSA Contract Specialist Eileen Perez. Perez[3] is a contract specialist for GSA who was assigned to administer GSA's contract with the Respondent and works out of GSA's Auburn, Washington office. The office is headed by Contracting Officer Pat Tackett. White begins by stating that the Union has "asked for an investigation into the lack of performance by GSA personnel related to wage surveys and wage determinations; he points out the great disparities between what building security guards who guard entrances and surrounding areas at Federal facilities are paid in comparison with the pay received by court security officers who guard courtrooms and adjoining areas in those same buildings; and he requests that a retroactive increase be given to the union security guards in an effort to provide them with a fair and equitable wage. Lastly, he advises Perez that "[i]f you choose not to assist us then I will give our congressional people your name as a focal point to begin their investigation."

On September 30, 1998, Perez replied to this letter by advising White that the letter had been forwarded to the Respondent for disposition, and suggested that he direct such labor matters to the Respondent. She also states that, "[i]n addition, the U.S. Department of Labor is the sole sovereign in establishing its schedule for wage surveys and subsequent wage determinations. GSA is only required to submit requests for wage deter-

[1] These letters were not introduced into evidence.

[2] It was agreed at the hearing that the omission of the word "not" from the sentence was a typographical error.

[3] Perez, currently Eileen Trezise, will be referred to herein as Perez as this was her name on the relevant documents and during the events in question.

minations on an annual basis and is diligent in fulfilling this requirement."

The last proposal the Union presented to the Respondent is dated October 6, 1998. This proposal contains the following language under the heading "Wage Schedule":

> Wages, and other economical [sic] issues, are pending and under congressional review.[4] Contract will include wages General Services Administration and Department of Labor approve.

2. Requesting employees to sign overtime waiver forms

Regional Manager Thomas Dufresne is in charge of the Respondent's Anchorage office. In February 1999,[5] Dufresne was advised by his superiors that if the employees who were then working four 10-hour shifts (four-10s) wanted to continue doing so they would have to sign a document titled "Flexible Work Hour Plan" issued by the State of Alaska Department of Labor Wage and Hour Administration (ADOL) which constitutes an acknowledgment that the employee is voluntarily waiving overtime pay for hours worked in excess of 8 hours per day in order to enable the employee to work a 4-day workweek of 10 hours each day. This flex plan had been specifically approved for the Respondent's use by ADOL in January 1997, and had been utilized by the Respondent since that time in connection with other contracts not involved herein.[6]

Dufresne testified that in early February he gave copies of the form to Supervisor Lewis Ketchum.[7] Ketchum reported directly to Dufresne and supervised all of the security guards under the GSA Contract. He instructed Ketchum to provide such forms to the two employees who were currently working a four-10's schedule and to request that they sign the forms if they wanted to continue working that schedule. He further instructed Ketchum that if for some reason they did not want to sign the forms, Ketchum was to advise them that they would be placed on a "five-eight's" schedule (5 days per week, 8 hours per day). In either case they would be working a regular work week of 40 hours per week. Dufresne testified that he did not tell Ketchum that the employees would be terminated if they did not sign the form.[8]

Thereupon, Ketchum simultaneously presented copies of the form to the two employees, namely Charles Reed, local union president, and Kenneth Woods, who were apparently the only employees working four-10s at that particular time. Both Reed and Woods refused to sign the document because they believed the form, bearing a 1997 date, was outdated, and they feared that if they signed it they would be jeopardizing their right to back overtime pay which the State of Alaska claimed was due them and other employees since 1996.[9] Ketchum then advised them, according to the testimony of Reed and Woods, that if they did not sign the form they would be terminated. Nevertheless, both refused to sign the form.

The Respondent did not advise the Union in advance that it was requesting employees to sign the flex plan forms and envisioned no problem with this procedure as, during the course of contract negotiations, the Respondent and Union had agreed to tentative contract language that provided overtime pay only for all hours worked in excess of 40 hours per week, and, in addition, also provided that, "[s]hifts shall be scheduled at the discretion of the Employer." During times material herein, infra, the Union was insisting that the Respondent sign a contract containing such provisions; but the Respondent refused to sign it because it was not a complete contract as contractual wage provisions and certain other matters had not yet been negotiated.

On February 4, Local Union President Reed wrote a letter to Dufresne stating that he had advised union members not to sign the form because it is outdated. Further, he requested that Dufresne "refrain from making threats, or attempts to coerce our members on matters that are in question." The letter also states as follows:

> If you obtain new forms with a current date, or if you wish to send me a letter of intent or agreement that this form only pertains to the future, I will be happy to give it my blessing. If you will do this I will ask our members to sign your form.

Neither Reed nor Woods were terminated or further threatened for refusing to sign the form. Rather, on February 9, they were presented with an identical but currently-dated form which Dufresne had obtained from ADOL. Both Reed and Woods voluntarily signed this form because it was their prefer-

[4] This appears to mean the Union is pursuing or intends to pursue its request for an investigation of GSA, as suggested in White's aforementioned letter to Perez, and/or a similar investigation of the Department of Labor, regarding the failure of these agencies to assist the Union in obtaining an immediate wage increase.

[5] All dates or time periods hereinafter are within 1999 unless otherwise specified.

[6] The form is a three-part document: The first section of the form constitutes the Respondent's application or request to ADOL to enter into the flex plan with the Respondent's employees; the second part contains ADOL's approval of the request, and is dated January 27, 1997; the third part of the document contains signature and date lines for employees who want to sign up for the plan, and specifically states that it is "TO BE SIGNED BY EMPLOYEE **AFTER** DEPARTMENT APPROVAL." (Original emphasis.)

[7] Ketchum did not testify in this proceeding because he left the Respondent's employ in about April and moved to Florida, and the Respondent has been unable to contact him. It is important to note that although Ketchum, as the Respondent's highest ranking supervisor, was excluded from the unit, he was instrumental in bringing in the Union, attended union meetings, and even assisted the Union by notifying employees by phone or radio on the morning of April 21 that the strike was on, infra; one employee described Ketchum as one of the two top leaders of the Union. The Respondent was not aware of Ketchum's dual loyalties.

[8] I credit this testimony of Dufresne.

[9] The Respondent had kept the Union apprised of this situation which resulted from the fact that GSA had initially misled the Respondent by advising that federal wage and hour laws superseded State laws. It turns out that this is true except in Alaska. GSA acknowledged, and Perez so testified, that because the Respondent had been misled and had since 1996 relied upon GSA's erroneous interpretation of wage and hour provisions, that GSA had assumed liability for the back overtime pay. The Respondent had advised White that this could take some time to calculate and that when the money was received from GSA the Respondent would pass it on to the employees. The flex forms were utilized to correct the error.

ence to work four-10s with no overtime in exchange for a 3-day weekend. Thus, insofar as Reed and Woods were concerned, the signing of the flex plan document was a mere formality that did not alter their agreed-upon terms and conditions of employment.

3. The request for information

In a letter from White to Karawia, dated November 3, 1998, White requests, inter alia, that the Respondent "Submit accounting of Health and Welfare expenditures, including documented cost of medical insurance currently forced upon Local #51 [sic] employees."

Nearly 4 months later, in a letter from Reed to Dufresne dated February 26, Reed states as follows:

> Please consider this letter as the Union's official request for a full and accurate accounting of all Health and Welfare and 401(k) funds received and distributed for each employee in our union bargaining unit. I am also requesting that you provide me with a copy of both plans including all benefits, options, and all other important information and descriptions.
>
> We have requested this information several times in the last year to no avail. I will expect to receive this information from you, not later than ten (10) days following receipt of this letter.
>
> If you have any questions, please call me.

Dufresne did not respond to the letter but simply forwarded it to the Respondent's California headquarters. The Respondent did not specifically respond to this request for information.

The Respondent maintained an interrelated health and welfare (medical insurance) and 401(k) benefit program that was complex and not readily understandable. It applied to all of the Respondent's employees, not merely those involved in the instant matter. Upon being hired, all employees, without exception, were required to enroll in the medical insurance plan, and thereafter, during certain enrollment periods, could opt out of the medical coverage, provided they could show proof of other medical coverage, and enroll in the Respondent's 401(k) plan. Once enrolled in the 401(k) plan they could choose certain funds in which to place their money, but if those funds were not performing satisfactorily the administrator of the plan had been given the authority and discretion, apparently embodied in documents signed by the employee, to place the money in a different fund without specific authorization from the employee. The coverage/contribution for the medical/401(k) plan was paid for by the Respondent and each employee received approximately $1.30 per hour which, as noted above, was applied either to the health and welfare or to the 401(k) part of the plan.

Many employees were complaining to Dufresne and to the Respondent, verbally and by letter, about different aspects of this convoluted arrangement. Some believed that the medical insurance coverage was grossly inadequate; those employees who put the money into the 401(k) plan complained about the failure to be kept up to date by the plan administrator regarding their account balances and even about the particular fund in which their money had been invested; and still others believed that, because of the nonresponsiveness of the plan administrator, the arrangement was suspect and that perhaps the Respondent was engaging in unlawful activity and profiting from the plan. As a result of the confusion and discontent, the Union proposed that the employees be given the option of participating in the plans or of receiving the corresponding amount of money in their paychecks. This proposal was a matter of contention that warranted further bargaining, as the Respondent was apparently not receptive to the Union's proposal in this regard. Several employees testified that they voted to strike in large part because of their dissatisfaction with the plans in general or with specific parts of the plans that they found objectionable or did not understand.

Upon the Union's request the Department of Labor conducted an audit of the Respondent with regard to the plans and other matters. It found that the plans complied with the legal requirements for such health and welfare and 401(k) programs. It also determined, apparently as a result of a technicality, that some few employees were owed backpay for vacation benefits, but this in no way involved the health and welfare/401(k) plans and amounted to a nominal total amount of approximately $2000. The Respondent, while believing that it did not owe this money, nevertheless paid the employees the amounts determined by the auditors because the total amount was nominal and it was not considered to be cost effective to pursue the matter. These payments were made to the effected employees in March.

Dufresne testified that upon being hired each and every employee received a copy of the plans, and that employees who complained about their benefits were given the toll-free "800" number of the plan administrator. Karawia testified that during the course of bargaining, he provided White with copies of the plans, and, upon learning that the employees were having trouble contacting the plan administrator and himself discovering that there was indeed a problem with the 800 system, personally attempted to get the plan administrator to correct these deficiencies.

Karawia also testified that all of the Respondent's employees nationwide were covered by the same health insurance and 401(k) plan, and that with regard to each of the Respondent's contracts with governmental or nongovernmental clients it was the Respondent's practice to submit to the plan administrator, at regular intervals, a lump sum payment calculated by simply multiplying the number of employees on the payroll by the total hours worked; and upon receiving this payment the plan administrator would allocate the money to the appropriate health and welfare or 401(k) fund in which the employee had previously enrolled. The Respondent was not furnished with any records by the plan administrator showing the details of each employee's account, and therefore could not furnish the Union with any such records.

Karawia admitted that he did not respond to Reed's February 26 request for information. Indeed, as noted above, the plan administrator did not furnish the Respondent with information regarding each employee's 401(k) account and therefore the Respondent did not have the information. Further, according to Karawia, he believed the Union was not entitled to personal and confidential information such as the amount of each em-

ployee's 401(k) portfolio. Believing that the Union had all the information that the Respondent could furnish, and also, according to his affidavit, that the Union was not entitled to the details of employees' personal accounts, he did not reply to Reed's request by advising Reed or the Union that no further information was in the Respondent's possession. Karawia also testified that at no time thereafter did the Union ever renew this request or indicate that this was a reason for striking. Thus, this was not mentioned during the March 12 conference call, and was not mentioned in the Union's various communications with the Respondent prior to the strike, infra.

4. Threats to strike; the March 12 conference call; and the strike vote

By letter dated March 10, Reed sent the following letter to GSA Contract Specialist Perez:

> I am writing to give you a heads up on Local 46 pending action. A strike by our Union, Local 46 against International Services is imminent within the next few weeks. The strike will occur at the most opportune time after we take a strike vote among our members. I can assure you that we are unanimous in our effort to bring International Services to justice.
>
> The reasons for the strike, you are already aware of. Once again I have listed them for your convenience and to refresh your memory.
>
> 1. Bad faith Bargaining.
> 2. International Services refuses to bargain with Local 46.
> 3. Numerous safety violations which involves the officer's safety and the safety of others.
> 4. Numerous varied unfair labor practices.
> 5. The company's refusal to abide by State and Federal Laws.
> 6. Employee coercion.
>
> As you are aware we have advised you and your representative, Mr. Joe Sturrup,[10] of all these items numerous times. We had hoped that you would assist us in resolving these problems. We sincerely regret the fact that you could and would not get involved in assisting us to resolve the problems. In the world today many things can be accomplished with positive results through cooperation and team effort. It would be much better if we could be partners, or team members rather than adversaries.
>
> I want you to know that this strike is against International Service, Inc., and not against any Federal Government agency. I did not want this to be a surprise to you. A "Strike Vote" will be conducted among the members of Local 46 and then a strike will be planned shortly thereafter.
>
> Once again, if there is any way we can come to an agreement, or you can assist us, or work with us please let me know as soon as possible. We are always willing to listen and work together for a successful completion. All we are asking is fairness and a reasonable conclusion.
>
> If you have any questions please call me so we can discuss them.

A copy of this letter was sent by Reed to a list of ten addressees including the NLRB, Alaska Congressman Don Young, Senator Ted Stevens, the vice president of the United States, the U.S Department of Labor, the U.S. Federal Protective Services, GSA, the Union's northwest director, Ed White, and the Union's International president, Jim Visar; significantly, however, a copy of the letter was not sent to the Respondent.

Upon receiving this letter either Perez or her superior, Pat Tackett, immediately contacted Karawia and suggested that he initiate a conference call with the Union to discuss the problem. On March 12, a conference call was held. Those participating were Perez and Tackett on behalf of GSA, Joseph Stirrup on behalf of FPS, Karawia on behalf of the Respondent, and White and Reed on behalf of the Union. Karawia testified that the overriding issue was GSA's concern for the safety of the public and the security of the Government facilities, and Tackett attempted to elicit definitive responses from White regarding whether and when a strike would commence. White was noncommittal and said there may or may not be a strike. Tackett also asked Karawia whether the Respondent was ready for a strike, and Karawia replied affirmatively.

Karawia testified that two other matters were discussed during this conference call. White, who did most if not all of the speaking on behalf of the Union, brought up the subject of the overtime backpay that some employees were owed. Karawia assured him that the amounts owed to the employees were being calculated and that the employees would receive the overtime backpay when this process was completed.[11] Primarily, however, White's emphasis was upon wages, and he renewed his demand that the Respondent grant a wage increase to the unit employees that would make their wages comparable to those of the court security officers. Karawia again explained that the Respondent could not agree to this, and suggested that the only way this could be accomplished was for the Union to go directly to the Department of Labor and attempt to get the Department of Labor to reclassify the unit employees to the same classification as the court security guards; then the Respondent would be able to justify these wages in a collective-bargaining agreement which the Department of Labor and GSA could approve.

During the conference call Karawia told White that he wanted to continue contract discussions with the Union but that he would do so only on the condition that negotiations be conducted with the assistance of a Federal mediator, explaining that he deemed this to be necessary because the Union's unjus-

[10] Joseph Sturrup was, at that time, the onsite contracting officer's representative (C.O.R.) who worked for the Federal Protective Service (FPS), an adjunct to GSA, and was responsible for federal building security and overseeing GSA's contract with the Respondent to insure that all provisions of the contract, including the hiring of qualified employees, were being adhered to by the Respondent.

[11] Reed agreed that both Karawia and Perez said that they were working on computing the amount of overtime backpay for those employees who were entitled to it, and he assumed that this meant they were intending to pay it in due course.

tified accusations to multiple Government agencies and other influential individuals were damaging to the Respondent's relationship with GSA. White, according to Karawia, was very argumentative, and nothing was accomplished. Responding to Karawia in the same vein he had responded to Tackett regarding the threatened strike, White simply said that maybe the Union would negotiate with a mediator and maybe not, and maybe the Union would get back to the Respondent and maybe it wouldn't. Significantly, neither Reed nor White brought up any other issues, and neither renewed any request for information about health and welfare benefits or the 401(k) plan.

Perez testified that it was Tackett's idea to have the conference call in order to dispel or confirm rumors of a possible strike, as a strike would place the Federal buildings and their occupants at risk, and jeopardize the security measures that were designed to protect lives and property. According to Perez, this was explained to the Union during the conversation. Contracting Officer Tackett "point blank" asked White two times during the call whether there was going to be a strike, and White's response on both occasions was, according to Perez, "We didn't have to answer that." Perez suggested that a mediator be contacted to assist the parties in working out their differences. Karawia indicated that he was not opposed to this, and White indicated that he would get back to Karawia about this suggestion. Although the conversation lasted for more than an hour Perez was unable to recall any other subjects discussed, as the conversation was very heated and apparently was difficult to follow in terms of any logical exchange of ideas. During the call Tackett asked C.O.R. Sturrup if he was prepared for a strike, and Sturrup said yes. She also asked Karawia the same question, and Karawia said yes.

On March 14, Reed conducted a strike vote. According to Reed, the vote in favor of striking was unanimous. The document he prepared for the employees' signatures is as follows:

> STRIKE VOTE AND AUTHORIZATION TO STRIKE.
>
> WE THE UNDERSIGNED AUTHORIZE OUR UNION, UGSOA, LOCAL 46 AND OR OUR PRESIDENT CHARLES F. REED TO CONDUCT A STRIKE AGAINST OUR EMPLOYER INTERNATIONAL SERVICES FOR UNFAIR LABOR PRACTICES DURING THE MONTHS OF MARCH AND APRIL 1999 AT AN APPROPRIATE TIME SUITABLE TO OUR PRESIDENT.
>
> THIS VOTE WAS CONDUCTED ON SUNDAY, MARCH 14, 1999 BETWEEN THE HOURS OF ONE AND FIVE P.M.

On March 16 White sent the following letter to Karawia regarding the March 12 conference call, with copies to Perez, to GSA Deputy Associate for Acquisition Policy Ida Ustad, and to the vice president of the United States:

> Re: Conditions of Negotiations
>
> Dear Mr. Karawia,
>
> That conference call fiasco was a real antiunion piece of work. I complement you for being able to get GSA employees to take your side. We had tried countless times to get Ms Perez off her bureaucratic butt and she just quoted to [sic] many ways the federal laws prevented her getting involved. Then poor "Sam" [Karawia] is in danger of being struck because of his anti-union attitude, unfair labor practice and bad faith bargaining charges and she swings into action. The Union has filed additional charges against you for intimidation, coercion, threats against Union members with the National Labor Relations Board. We are also filing official complaints against Eileen Perez and Pat Hackett, for interfering with legal and federally sanctioned activities, and intimidation of union members for the purpose of preventing our legal and justified right to strike. It will be impossible to deny the close relationship between you and Ms Perez because we recorded the entire conference call.[12]
>
> Mr. Karawia, the union will meet with you, and a member of the Federal Mediation and Conciliation Service, if the following conditions and time restraints are agreed to. If you cannot, or will not, meet these conditions you can resume planning for a strike. They are as follows:
>
> 1. Pay all back overtime pay, as directed by the State of Alaska, by April 1, 1999. (plus 5-percent interest)
> 2. By April 1, 1999, drop the useless medical coverage you provide the security officers and pay the U.S Department of Labor Health & Welfare Payments, ($1.39 per hour) and notify employees, in writing, the medical coverage/401K is no longer mandatory.
> 3. By April 1, 1999, sign the contract proposal sent to you in October of 1998 and agreed upon at the table by your representatives and the Union.
> 4. Instruct Mr. Dufresne to stop harassing Union members and participate in safety procedures that prevent firing on the pistol range when the temperature is 20* [degrees] with a wind chill factor of 30* [degrees].
>
> If you can meet these conditions we can meet and settle all of our differences. If you cannot you are making a statement to the union and your friend Ms. Perez. She, nor Ms. Hackett, will not be able to help you if we strike. They will be too busy trying to explain to their bosses how they allowed a strike to happen.
>
> You can fax your answer to me, do not call me, or call Local President Chuck Reed. We will wait until March 22, 1999 for your response. If you agree, you have until April 1, 1999 to implement the conditions stated above. If we do not hear from you by the 22nd we will begin making plans most advantages [sic] to the union and the citizens of Alaska.

Karawia replied by letter dated and faxed on March 22, the deadline given by White. Karawia expressed his disappointment with White's reaction to the conference call and took offense with White's "tone, allegations, and unreasonable demands." He advised White that, "In the interest of fairness to all parties, any negotiations must be conducted by a Federal

[12] Prior to and at the outset of the hearing in this matter the Respondent requested the tape recording of the conversation. Reed testified that it no longer existed as he had destroyed it because of the Respondent's contention, infra, that the recording of such a conversation was violative of California law.

mediator, or other disinterested party;" that he would be forced to take action if White continues to defame his name, character and reputation; that the Respondent will not respond to unreasonable demands or threats; that if the Union should decide to strike, the Respondent "will have no recourse except to take any necessary steps deemed necessary by the company and/or the GSA to protect the citizens of Alaska, and the property of the United States Government;" and that the Union's recording of the conference call is deemed by California law to constitute an invasion of privacy and may constitute either a misdemeanor or felony depending on the circumstances. Karawia concludes the letter by stating that his dealings with other unions on other government contracts have proved to be very satisfactory as those unions "took the time to look into the requirements of the GSA, and followed the necessary procedures," and that, "We have tried to work amicably with you from the beginning, and still would like to do so . . . . We look forward to continuing negotiations with the aid of professional mediation in the interest of fairness for all parties."

5. Audit of unit security guards; removal of Reed and Ketchum from the contract

Meanwhile, by mere coincidence, another development that exacerbated the situation surfaced on March 12, the date of the conference call. On that date a memorandum was sent by C.O.R. Sturrup to Dufresne, entitled "Contract Guard Certification Discrepancies."[13] The background of this situation is as follows: Reed was apparently able to persuade U.S. Congressman Don Young's office to inquire about the qualifications of the unit security guards.[14] This caused Sturrup and FPS to commence a detailed audit of employees' qualifications, and the audit results were set forth in Sturrup's March 12 memorandum. It was found that six guards did not have current first aid or CPR (cardiopulmonary resuscitation) documentation, and that arrest authority documentation was missing for six other guards, including Reed and Supervisor Lewis Ketchum. Under the GSA Contract, guards are ineligible to be hired unless they have documentation that establishes "proof of arrest authority in the last 10 years." The memorandum concludes with the following request from Sturrup: "Please provide this office with the requested documentation or a plan of action to provide the documentation by close of business on Friday, March 19, 1999."

With regard to those employees who did not have current first aid or CPR certifications, the Respondent was able to rectify this by scheduling the appropriate first aid classes. With regard to four of the guards who did not have proof of arrest authority, the Respondent was able to furnish requisite documentation that existed but was apparently simply missing from their files, showing that they not only had proof of arrest authority but also that such authority had been granted within the last 10 years prior to their being placed on the GSA contract. However, the documentation of proof of arrest authority of both Reed and Ketchum disclosed that this authority had been granted **more** than 10 years prior to their being placed on the GSA contract. Therefore, it appeared that they never should been hired to work under the contract as they did not meet the hiring qualifications in the first instance. This became a problem that resulted in the removal of Reed and Ketchum from the contract for about 1 day, and nearly resulted in a strike on March 23, infra.

On March 13, White wrote a lengthy letter to Sturrup accusing him of, in effect, conspiring with the Respondent to lay off qualified security guards, threatening to file unfair labor practice charges against him, and characterizing his action as "more union intimidation and coercion." He advises Sturrup that, "Whether or not there will be a strike is not your direct concern," and that, "[l]aying off these two very qualified men just to show the other union members you have the power will backfire on you." He further states that, "[a]t the Union's request the U.S. Department of Labor, Wage and Hour Division, is currently investigating [the Respondent] at their home offices in Torrance, California," and that "Ms. Ida Ustad, Deputy Associate Administrator, General Services Administration in Washington, D. C. is investigating the wage problems, wage determinations, and wage disparities between GSA security officers and court security officers."

Dufresne testified that he spoke with Reed and Ketchum about the matter. The GSA contract provided that an applicant could substitute documentation of an Associate Degree (AA) in Law Enforcement to meet the arrest authority requirement, and Dufresne asked each of them whether they had such a degree. Ketchum said no. Reed said yes. Dufresne asked Reed to send away for his college transcript showing that he had the degree or appropriate college credits for the degree, and Reed replied that he would do so if the Respondent would pay for the college transcript. Dufresne declined, stating that it was Reed's responsibility to obtain the documentation.[15]

Dufresne testified that he did not want to remove Reed and Ketchum from the contract. According to Dufresne, the Respondent was short of security guards and was "eating overtime" because it was very difficult to find sufficient qualified personnel who would meet the stringent and extensive qualifications required by the GSA Contract[16] and who were willing to work for $11.09 per hour.[17] The removal of Ketchum and

[13] The GSA Contract contains stringent requirements for the hiring and qualifications of contract security guards. The Respondent is required to screen applicants to insure that they meet these qualifications and to forward the underlying documentation to the FPS. The FPS, in turn, is required to investigate the credentials of these applicants and to certify that they do in fact have the appropriate qualifications.

[14] Why Reed would request such an investigation of the very employees the Union represents is not explained in the record.

[15] On March 16, Reed wrote to Dufresne advising him that the action contemplated by Dufresne and Sturrup was unwarranted and constituted union intimidation and coercion, and that Sturrup had told him that he would ask the GSA contracting officer for a waiver. Further, the letter states as follows: "You asked if I would get a transcript of my college grades. I will do that but I must tell you that on prior occasions it took anywhere from 6 weeks to 6 months to finally obtain a transcript from the University of Alaska in Fairbanks for old records."

[16] There are specific requirements pertaining to training, health and physical fitness, prior work experience, firearms qualifications, proof of arrest authority, and other requisite qualifications.

[17] It appears that the unit complement had decreased from about 45 or 50 employees to approximately 35 employees as a result of the Re-

Reed from the contract would merely exacerbate the staffing problems and require him to schedule still more uncompensated overtime for the remaining employees. On March 22, at about 5:30 p.m., Dufresne met with Reed and advised him that he was being removed from his post due to GSA contract qualifications.[18] Reed, according to Dufresne, said, "fine" and started to leave. Dufresne, who had been told by Karawia not to discharge Reed but to offer him a position elsewhere, offered Reed a different post under a different contract. Reed asked what it paid, and Dufresne said that it paid $6.06 per hour. Reed declined to accept it and said that he would return his equipment and uniforms by the end of the week.

Sturrup testified that Congressman Don Young's office contacted the Regional Office of GSA in Auburn, Washington, regarding the Union's request that the qualifications of the security guards be investigated, and two individuals from the Regional Office came to Anchorage to audit the records. The audit took about 2 days.[19] Normally GSA does not permit unqualified guards to remain on the contract, and has the authority to request that the contractor remove an employee. FPS, however, has no authority to request that an employee be removed from a contract, and may only take immediate action in the event of exigent or life threatening circumstances. Because this was something that should have been caught when Reed and Ketchum were hired but was overlooked at the time, Sturrup told Reed and Ketchum that he would apply for a contract "waiver" so that they could continue working. He also told this to Dufresne and Karawia, infra. Sturrup testified that in other instances such experience waivers have been granted when requested **prior** to the time the employee is actually hired in order to make it easier for a contractor to obtain employees.

When asked whether the waivers for Reed and Ketchum were granted because of concerns that there would be a strike, Sturrup testified that, "[i]t was considered." Sturrup testified that shortly after the issuance of the March 12 deficiency letter, he spoke with Karawia and advised him "that we were going after a waiver and if the waiver was granted that I thought that keeping these two gentlemen on board would probably go a long way towards settling the [strike] problem." Karawia, according to Sturrup, said that "he would look into it and if that's what it would take to resolve the situation then he probably would keep them on." Karawia, according to Sturrup, never said that he would discharge either Reed or Ketchem.

Perez testified that after she received the memorandum from Sturrup, she spoke with him about the matter. Sturrup told her that it did not seem necessary that the employees working under this contract should be required to have proof of arrest authority within the last 10 years, and that he would recommend a contract modification. She phoned Karawia on March 17 and spoke to him generally about how the documentation was coming and what was the status of the discrepancies listed in Sturrup's March 12 memorandum of the audit results, as GSA expected the Respondent to take care of those deficiencies. Reed and Ketchum, and another individual, were specifically discussed. Karawia requested that she send him a "cure notice" so that he could correct those deficiencies by removing the individuals from the contract and replace them with guards who had the requisite arrest authority.[20] Perez told Karawia that a cure notice was not the answer, as the problem seemed to be a mutual oversight by both the Respondent and the FPS, and that the matter could be rectified by modifying the contract. Thus, she made it clear that GSA was not going to issue a cure notice in this instance. Karawia said okay, "[J]ust fax me the mod [modification] and I'll have my legal office take a look at it . . . ." Karawia, according to Perez, did not oppose a modification.

The testimony of Perez, together with her letter of March 22 and her notes of pertinent phone conversations, shows that the following sequence of events transpired after March 12.[21] Perez understood that Sturrup would be recommending that Contracting Officer Tackett issue a contract modification for Reed and Ketchum. At some point Perez spoke with Tackett and explained the situation, and was told that "we should modify the contract when [Sturrup] submits his recommendation." On March 17 she phoned Karawia and asked him what he was going to do to take care of the deficiencies enumerated in Sturrup's March 12 memorandum. Karawia said that he just received notice that Reed and Ketchum were not qualified and should be replaced with guards that had the requisite arrest authority, and asked Perez for a cure notice that required him to remove Reed and Ketchum from the contract in order to correct the deficiency. Perez, at this point, then explained to him that the problem seemed to have resulted from a "mutual oversight" by both the Respondent and the FPS and could be rectified by modifying the contract, and, according to her notes of the conversation, that "we'd have to consider the circumstances and the CO [Contracting Officer Tackett] will make a determination on a case by case basis. Waivers[22] can be granted but must be

spondent's inability to retain qualified personnel, and that this resulted in considerable overtime for the remaining employees. In fact, Reed testified that one of the complaints was that "many of us were forced to work overtime whether we wanted to work overtime or not. Because for the majority of their time they never had enough people, they weren't able to keep people here on the contract and many of them came and went."

[18] Dufresne had removed Ketchum earlier that day for the same reason.

[19] Sturrup testified that sometime shortly after the audit he was removed as C.O.R., "probably" because of his permitting unqualified personnel to be hired.

[20] A cure notice is, in effect, a demand letter by GSA requiring that certain action be taken in order to remedy contract violations.

[21] Perez was subpoenaed by the Respondent to testify in this matter. She was called out of order so that she could make a flight back to her office in Auburn, Washington, and it appears that she had not been prepared by counsel beforehand. Although she was attempting to be as accurate as possible, she had an uncertain recollection of the somewhat convoluted sequence of events, and I find that her contemporaneous notes and the March 22 letter are more reliable than her memory of the events in question. Therefore I rely on her accounts of various conversations with Karawia only to the extent that such accounts are not inconsistent with the documentary evidence.

[22] It appears that both Sturrup and Perez were initially considering contract "waivers" for Reed and Ketchum. A waiver is much different than a "modification," and Perez emphasized during her testimony that in fact waivers for Reed and Ketchum were not granted; rather it was necessary to issue a contract "modification," to resolve the problem. A

requested from contractor." In other words, Perez simply told Karawia that a modification was being considered and that Contracting Officer Tackett would be the person making the decision. Karawia said okay, "[J]ust fax me the mod [modification] and I'll have my legal office take a look at it . . . ." He did not say that he did not want or would not sign a modification.

Then, on March 18 Sturrup emailed Perez stating, "per our conversation this morning I wish to request the following modification to the contract . . . ." On March 20 Sturrup again called her and wanted to know when the modification document would be completed because the Respondent was preparing to remove Reed and Ketchum from the contract. It was not until March 22 that Perez phoned Karawia and, according to her notes, the following conversation took place:

> . . . told him will be modifying requirement and will fax the mod to him today for signatures. He stated he will have to go through his legal and will sign it today if they okay it. Told him this mod will allow him more flexibility in hiring more individuals and the current guards will be in compliance.

She faxed the document to him, bearing an "Effective Date" of March 22, with a covering letter, also dated March 22, requesting that he sign the modification and return it "as soon as possible." Karawia returned it to her on the following day, March 23, on which date Contracting Officer Tackett also signed it, and it became effective.

Perez testified that the requested modification was approved by Tackett not as a benefit for any individual but because the modification was "in the best interest of the government." Perez stated that GSA did indeed want to avert a strike, but denied that union pressure had anything to do with Tackett's approval of Sturrup's modification request.

In the interim, Dufresne was strongly reprimanded for permitting the hiring of unqualified guards. Thus, on March 19, DeLong sent the following letter to Dufresne:

> While I appreciate you faxing the letters sent to you and Joe Sturrup by Charles Reed, I am concerned that I was not apprised of the Contract Guard Certification Discrepancies "FPS" Memo of 12 March 1999 as mentioned by Reed in his letter.
>
> Such a document should have been immediately sent to corporate for review. By not providing said information in a timely manner you have compounded the problem and further injured ISI's credibility with FPS and GSA.
>
> . . . .
>
> Thus, by contract all applicants must have the minimum experience. That contractual obligation can only be amended, modified or deviated from upon orders from the Contracting Officer. The contracting officer representative [that is, Sturrup or Cape] is **not** allowed this power. [Original emphasis.]
>
> . . . .
>
> An additional six ISI employees lacked documentation of arrest authority, arrest authority with [sic] the past ten years and Law Enforcement Academy certification. You have informed me that four of the above have corrected their records. However two: Lewis Ketchum and Charles Reed were not qualified at the time they were hired and are not qualified per the contract at this time. Both Lewis Ketchum #1450 and Charles Reed #1454 are to be removed from the GSA contract immediately. They should be transferred to non-government positions, not terminated.
>
> . . . .
>
> Hiring personnel that do not meet the minimum requirements is a serious breach of your management duties. Allowing security officers to work with expired First Aid/Firearms is also in violation of your assigned duties. Either area could cause irreparable damage to ISI's relationship with GSA. You are to abide by the contract unless notified by this office. Any further discrepancies will cause you to be disciplined up to and including termination.

Similarly, on March 22, DeLong sent a memorandum to "All Managers'' regarding "Applicant Profile Form/New Hires," stating, inter alia, the following:

> Recently I have received complaints from our government clients regarding ISI hiring security officers that do not meet the minimum requirements. To end this problem once and for all, an applicant profile must be filled out and signed by the manager each time you hire, submit paperwork for clearance or whatever step is taken that would result in the applicant becoming an ISI employee.

Karawia testified that he was not aware that Supervisor Ketchum was involved with the Union, and believed that Ketchum was doing a good job as a supervisor. He testified that in the past GSA has required that guards be removed from the contract for various reasons, including neglect of duty and leaving their post without proper relief, and that GSA required strict adherence to the requirements of the contract.[23] He also testified that his experience with GSA has been that "its willingness to grant modifications or waivers of experience requirements" *after* the employees had been hired was "close to impossible" to obtain. In other words, requests that GSA grant waivers or modifications regarding personnel qualifications would have to be submitted and acted upon *prior* to the hiring of the individuals in question, and even then it was difficult to receive an affirmative response from GSA.[24] [25]

He did ask Perez for a "cure notice" which would constitute, in effect, a demand letter from GSA that Reed and Ketchum be removed from the contract, because he knew that discharging

contract modification is a more significant change and in this case the modification deleted the contractual requirement for proof of arrest authority for all current and future guards, not just for Reed and Ketchum.

[23] Documents introduced into evidence by the Respondent corroborate this testimony.

[24] However, modifications regarding contract renewals, or changes in contract rates, or other modifications of a technical nature were almost routine,

[25] Documentary evidence introduced by the Respondent appears to corroborate this testimony.

Local Union President Reed would result in more charges and accusations against the Respondent, and a cure letter would constitute proof that GSA demanded that the Respondent take such action. He did not simply wait and see whether the modification would be issued because, "if you have nothing in writing from the Government it doesn't work and that's the way I learned in the past. Verbal doesn't work with the Government, it has to be black and white. If there's no mod to meet any special provisions in a contract it's not covered." Thus, Reed and Ketchum were removed from the contract because at that point in time the Respondent, according to Karawia, was clearly "in violation of the contract" and there was nothing in writing to the contrary. However, upon receiving the modification, he immediately signed it and returned it, without taking the time to submit it to his attorney.[26] And thereupon Reed and Ketchum were reinstated, having been removed from the contract for one day.

Finally, as noted above, Sturrup was demoted from his position as C.O.R. because he had permitted the Respondent to hire unqualified employees contrary to the provisions of the GSA contract which he was responsible for administering and overseeing on behalf of GSA.

6. Reed's negotiations with Sturrup; the aborted strike

Reed testified that March 23 was the first day that the Union threatened to go on strike. On that day he and Ketchum had a conversation with Sturrup and, according to Reed, "[I]n the light of trying to prevent a strike they issued this waiver." This conversation apparently followed a conference call earlier that day between Reed, Sturrup, Perez, and Karawia.

Reed testified that he was suspended by Dufresne on March 22, late in the afternoon at approximately 5 p.m. Dufresne told him that pursuant to Karawia's instructions, he was going to have to let Reed go and that he had no choice in the matter. Reed started to walk out the door and Dufresne said that he guessed he could put Reed to work over in the computer science center for the Municipality of Anchorage, but the pay would only be $6 per hour. Reed said no thanks, that he would be hearing from the Union's legal counsel.

Reed testified that he had planned a strike for noon on March 23, the day following his suspension. It appears that Reed had notified the unit employees of an anticipated strike in the event that he and Ketchum were removed from the contract. Reed had prepared a letter/leaflet dated March 22, on Reed's union letterhead as president of Local 46, addressed to "fellow Government Workers, labor union employees, fellow citizens and neighbors of Alaska" in order "to explain our strike against our employer." The letter includes a lengthy list of the Union's concerns, including "The Company's decision to dismiss it's own supervisor on this contract as well as the removal of the Union President, from his position under this contract."

According to the testimony of Reed, the reason there was no strike at that time is because he and Ketchum went to Sturrup's office on the morning of March 23 and "negotiated" with Sturrup, telling him that there would be a strike at noon if the matter of their removal from the contract was not resolved or corrected. Sturrup, according to Reed, made phone calls to Perez and Karawia at about 10:30 or 11 a.m. that morning. Sometime thereafter, apparently while still in Sturrup's office, the aforementioned modification was faxed to Sturrup. Sturrup gave a copy to Reed and told him that as a result of the modification he and Ketchum would be permitted to return to work. Reed testified that he called off the strike because of "this negotiating process between myself, Mr. Ketchum and Mr. Sturrup [that] took place in Mr. Sturrup's Office." Reed testified that he was negotiating with Sturrup "Because if the [removal of Reed and Ketchum from the contract] was not rescinded there would have been a strike at noon time."

Reed testified that the strike vote was taken on March 14, and that he was given authority to call a strike anytime "over the next 2-month period" and "[a]t the most opportune time, and whenever—a matter arose that would cause this to happen." He acknowledged that being removed from the contract was such a matter that would precipitate a strike, and that the reason no strike occurred on March 23 is because the Respondent signed the modification. Reed testified that on the day of the strike vote, March 14, it was decided that "they would go on strike immediately" if he or Ketchum were fired, and that in any event a strike would happen very soon thereafter in protest of other matters.

Security Guard Richard Gamble testified that there was an understanding among the employees that they were not to tell the Respondent when they were going on strike and that the strike would be scheduled to occur at the

> most inopportune time for ISI and for FPS. Specifically for when Jerry Cape and Mike Snowden who are FPS employees were going to be gone. So that they couldn't help fill in when we went on strike.

Gamble testified that although he had originally voted to strike, he changed his mind about supporting a strike because, "I felt that the way that they were dealing with things was unprofessional. I felt that the way they were leading it was going to eventually end up and get everyone fired. And it was something I decided I wasn't going to support."

On March 29, Gamble wrote a letter to Dufresne and also to Eric Gonzales, chief division counsel, Federal Bureau of Investigation, regarding a "Security Protocol Violation" on March 23 by Reed, who had been removed from the contract the day before. Included in the letter is the following account of Reed's conduct:

> Mr. Reed entered the [FBI] building to speak with SGT Woods and me concerning our reasons for not supporting a union-organized strike that day. Mr. Reed wanted SGT Woods to explain his reasons for his decision and also wanted to know if all the other guards at the FBI building supported his decision. After he got SGT Woods' explanation, he

[26] Karawia testified that he believed his signing of this modification, which he was not obligated to sign, proved to be highly detrimental as it modified the contract requirements to the extent that it provided GSA with an excuse to not renew his fourth year option and to reopen the contract for bid. In fact the contract *was* reopened for bid and the Respondent was not an eligible bidder because at that point in time its volume of business exceeded the "small business" eligibility guidelines established by GSA. Thus, the Respondent's contract expired on July 31, and a different entity was awarded the contract after that date.

> turned to me and asked if those were also my reasons. I told him that I made my decision for my own reasons but that I supported SGT Wood's decision not to walk out on a strike that day. After that, Mr. Reed turned back to SGT Woods and said "You don't run fucking union business. Mr. Reed's use of vulgarity only emphasizes his hostility which was directed at SGT Woods and me. [27]

Securilty Guard Kenneth Woods corroborated the testimony of Gamble. On March 26 Woods also submitted a handwritten memorandum to Dufresne, dated March 26, regarding the same incident, namely, that Reed was angry that the security guards at the FBI building were not willing to strike at a time when the building was very busy and there were 50 or more visiting military personnel in the building.

Security Guard Bruce Ward corroborated the testimony of both Gamble and Woods and wrote a similar memorandum, dated March 29, recounting the aforementioned incident. According to Ward's memorandum, Reed returned to work at the FBI building on about March 25 and refused to engage in friendly conversation with Ward because Ward had stated, on about March 22, that he, too, would not participate in a strike at that time due to the presence of the visiting dignitaries in the building. According to Ward's memorandum, this prompted Reed to "very hatefully" call him a scab. The memorandum states that the reason the security guards at the FBI building were refusing to strike at the time Reed had intended to call the strike was "due to a major conference that was ongoing [sic] that morning. A strike would severely embarrass the FBI's Senior Agent in Charge, and be a major security risk to 50 major law enforcement and military officials."

7. Union demands; the April 21 strike

On April 4 White wrote to Karawia, inter alia, as follows, with copies to various persons:

> Once again the Union is writing to you to insist you fulfill your obligations and complete negotiations. You averted a strike in March, by the skin of your teeth, but you may not be so fortunate the next time. If you would refer to the letter the Union sent on March 16th you will be reminded you have not met all the obligations we listed. These must be met by end of workday, April 16, 1999, or you will bear the responsibility for what happens thereafter.
>
> I will list the requirements once more so you cannot claim ignorance, at a later date. They are:
>
> 1. Pay all back overtime pay, as directed by the State of Alaska, that you admitted you were obligated to pay, plus interest. (NLRB currently list [sic] rates at 8-percent).
>
> 2. Drop the useless medical coverage you now hide behind and give employees the cash payment of $1.39 commencing with the next payday after the listed performance date.
>
> 3. Sign the partial contract, negotiated with your representatives, the Union sent to you in October of 1998.
>
> 4. I will concede Mr. Dufresne has been advised to consult with you and Federal Protective Service personnel before making any additional uninformed and/or impractical orders.
>
> If you can meet these provisions the Union will advise Mr. Jeff Clark, commissioner, National Mediation and Conciliation Service, we are ready to complete negotiations between International Services Inc. These negotiations will require your presence, or a written and notarized affidavit confirming that agreements made by your representatives will be honored by you.
>
> Contacting Ms. Perez or Ms. Tackett at General Services Administration probably will not produce the same results for you as the last time. The Union is filing charges against Ms. Perez and Ms. Tackett for interfering in Union-Company CBA negotiations . . . .
>
> The obvious objective of both Ms. Perez and Tackett was to assist you in averting a strike. That conference call was used to intimidate and coerce the Union into reconsideration of the planned strike . . . .
>
> I think Ms. Perez will be too busy defending her own lack of interest and response to help you this time. It is time for both of you to step up to the plate and do what is legally and morally expected of you. This whole matter is in your lap, Mr. Karawia. The Union has lost all patience with your posturing and stalling. It is time to get this all settled. You paid the backpay ordered as the result of our requested audit by the Department of Labor (a point you denied to Ms. Perez & Ms. Tackett). Why can't you just do this for the whole slate?

Karawia replied by letter dated April 19, as follows:

> On March 22, 1999 we sent you a letter expressing our wishes to enter into equitable and productive negotiations with the assistance of an impartial mediator. To date we have received no response to our letter, only another accusatory and inflammatory letter dated April 4th, which does not even acknowledge our wishes to resume negotiations.
>
> We are in the process of calculating the pay due our officers, and we will issue payments as soon as the necessary paperwork is completed. All other matters are pending until we complete negotiations with a mediator as requested. We feel this is the only way to prevent further accusations of unfairness from you. We have done all we can until you agree to join us at the bargaining table.
>
> Your threats and accusations serve no purpose but to annoy and alienate those of us who are attempting to work with you to reach a successful resolution to these matters. You seem more interested in inciting anger than in negotiating a Collective-Bargaining Agreement.
>
> I truly hope you can move beyond your present emotional state so we can focus on the true purpose of the Union, which

[27] The letter goes on to detail the unauthorized access by Reed to other offices in the building, and it is not clear whether the "Security Protocol Violation" specifically includes the confrontational conversation between Reed, Gamble and Woods, or whether this conversation is merely a predicate to Reed's subsequent conduct in entering other areas of the building without proper authorization.

is to negotiate an agreement that will benefit all of our officers in Alaska.

White faxed the following letter to Karawia on the morning of April 21:[28]

> Tonight I received a telephone call from Mr. Reed, President of Local #46, Anchorage, Alaska. He related you were willing to present a show of "good faith" to avoid the pending work stoppage. We are willing to accept a "good faith" offer if it meets, or greatly satisfies, the goals we have been attempting to achieve to this point. If it is true you have really made such an offer then the Union proposes the following:
>
> 1. Sign the negotiated, and agreed upon, contract sent to you in October of 1998.
>
> 2. Give written statement assuring employees will receive back overtime pay, as directed by the State of Alaska, to March, 1997, paid no later than June 1, 1999.
>
> 3. Give the employees the new wage determination, $12.62, plus the $2.00 per hour you allegedly offered today, and the schedule as shown below:
>
> $12.62 + $2.00= $14.62 effective May 1, 1999.
> $14.62 + $2.00= $16.62 effective August 1, 1999.
> $16.62 + $2.00= $18.62 effective August 1, 2000.
> $18.82 + $2.00= $20.62 effective August 1, 2001.
>
> 4. Agree to meet and finish formal contract negotiations within 30 days of this agreement, with the assistance of Jeff Clark, Commissioner, Federal Mediation & Conciliation Service.
>
> If you wish to avoid a work stoppage, and establish a working relationship with the Union, take a long look at our proposal. All we want is to be treated fairly and honorably. The Union will guarantee you the same high quality work force. With the above additions, and a signed labor contract, it will be easier to recruit more quality officers.
>
> Mr. Karawia, I must receive a signed & notarized affirmative response from you by 1100 hours, 04–21–99 Alaska time, to avoid the pending work stoppage. Please sign and notarize this document and fax it to me at . . . then Federal Express the original to me at . . . .
>
> . . . .
> I agree to the provisions as stated above in items 1, 2 , 3, 4 and will implement each as established in these four items. I do so knowing the Union will not cause a work stoppage and meet and bargain a complete Collective-Bargaining Agreement.
>
> Ousama Karawia, President
> International Services, Inc.
>
> April 21, 1999

Karawia responded with an immediate reply as follows:

> We are in receipt of your letter and have reviewed what the Union "proposes."
>
> 1. This first item is impractical at this time. We do not know the contents of the final contract at this point, and so we cannot sign it today.
>
> 2. As you have been informed, we are working on the back overtime pay, and we anticipate that all funds should be disbursed by June 1, 1999, as requested.
>
> 3. We will be happy to negotiate increased rates for the contract year commencing August 1, 1999 in the new Collective-Bargaining Agreement. Please be advised that employee rates cannot change in the middle of the contract year. After the GSA budget has been approved for the contract year we cannot go back and have pay rates increased.
>
> 4. Meeting with Jeff Clark within 30 days is acceptable to us, and after we have worked out all details with his assistance, that is the time the contract will be signed. If the contract were to be signed today, there would be no point in engaging in mediation with him.
>
> Please understand we have been diligent in our efforts to work with you, and in return we keep receiving threats and unrealistic deadlines on items that cannot be accomplished.
>
> We are pleased you want to commence work with a mediator within 30 days. However, it seems ironic that about 30 days ago, on March 22nd, that is exactly what we requested of you. Had you worked with us at that point, we could already have had an equitable CBA in place for the coming contract year.
>
> We look forward to meeting you at the bargaining table for the benefit of our employees.

The strike commenced at approximately 12 noon that day, April 21. The Respondent was never notified by the Union of the date or the time the strike was to commence. While Reed testified that he notified Dufresne of the impending strike on the afternoon of April 20. Dufresne testified that he was positive that Reed did not notify him. Rather, he first learned that a strike might occur when he received a phone call from C.O.R. Cape on April 20 stating that there were rumors of a strike. Cape told him to begin preparing for a possible strike the following day by contacting standby replacements. Dufresne did so, but the people he contacted included security guards who did not have licenses to carry firearms. On the morning of the following day, April 21, Dufrene received another call from Cape who stated that it looked like the strike would be occurring. Cape also advised him that any replacements would be required to have 2 years of armed security work.

Cape testified that on April 20 he heard a rumor of the possibility of a strike the next day. He brought this information to the attention of his superiors, and made plans to have two FPS officers from Portland, Oregon put on a plane at a moment's notice to provide support. He also called Dufresne and passed the information on to him. Dufresne, according to Cape, said that he had not heard anything about the possibility of a strike. On April 21, at about 8:30 a.m., Cape was told by Reed that the guards were going to strike that day at noon. At about 9:30 a.m. Cape phoned Dufresne and DeLong, who had arrived at

[28] While the letter is dated April 20 and was apparently prepared by White on the night of April 20, it was not sent by White or received by the Respondent until the next day.

the Respondent's Anchorage office by that time, and advised them that there would be a walkout at 12 noon. Then he went to the Respondent's offices where strike preparations were discussed. Cape was told by DeLong that the Respondent would have armed replacements available by 11 a.m. at the Federal Building, but that there were not enough replacement guards and nonstriking guards to fill four of the posts.[29] Ultimately, three of the posts were filled by FPS personnel, and one additional post was left unfilled. Immediately after the strike commenced and the replacement guards had assumed their assigned posts they were given some minimal training by FPS personnel and court security officers regarding how to use the x-ray and magnetometer (metal detector) machines at the entrances to the Federal Building. Customarily, according to Cape, proper security training for guards operating these machines at building entrances, and for other related duties, would take about 16 hours.

It was Cape's understanding from his conversation with Reed that the guards would leave their posts whether replacements were there or not, as Reed said nothing to the contrary. Further, according to Cape, Officer Royals and Officer Swanson left their posts before the 12 noon walkout time, and two FPS officers were sent to cover their locations. Cape testified that, "We were very concerned because the posts were left unmanned."

On April 24, Cape wrote a "Memorandum to Record" regarding "Post Abandonment" as follows:

> On Wednesday, April 21, 1999 at approximately 1135 hours, I received a telephone call from Mike Ofenloch, Property Manager for the Old Federal Building. He informed me that GSA Mechanic Gil Sauer had notified him that the guard, James Royals had left the property at 1130 hours and walked off down the street away from the building and had not returned.
>
> PSS Mike Snowden was sent to the Old Federal Building to cover the post until such time as a replacement guard could be sent. On his arrival at the building at approximately 1150 hours, PSS Snowden confirmed that Royals was not present at the building.
>
> At approximately 1130 hours PSS Joe Sturrup was sent to University Plaza to stand by for when the security guard departed the building at 1200 hours until a replacement guard could arrive. At about 1210 hours PSS Sturrup contacted me by cell phone and informed me that on his arrival at about 1145 hours he was met by the guard, Ray Swanson at the door of the building as he was walking out. He said Swanson handed him the keys as was [sic] leaving and had already changed into civilian clothes.[30]

Cape testified that a decision had been made on the morning of April 21 to take I.D. cards and key cards from the guards as soon after 10 a.m. as possible, in anticipation of the walkout, so that they would no longer be able to gain access to the buildings after the strike commenced. However, the guards were not relieved of their badges, uniforms or weapons and were therefore able to continue guarding their posts and performing their duties until they walked out.

8. Events following the strike; termination of the strikers; and subsequent communications

On April 23 the Respondent, by Vice President of Operations DeLong, issued the following letter to each of the approximately 19 striking guards:

> You have self-terminated your employment with International Services, Inc. by abandoning your post. Please bring all issued equipment with your clean uniforms to the ISI office . . . on Monday, April 26, 1999. Your final checks will be available after 1200 on that date.

Two weeks later, on May 7, Reed sent the following letter to Karawia:

> As a show of good faith, the GSA security guards who are on strike in Anchorage will return to work unconditionally on 16 May 1999 at 0700.
>
> Please advise of any details. If you have any questions please call me. We hope that this good faith will entice you to begin bargaining with us so that we may come up with a contract for the coming year.

DeLong replied by letter dated May 14 as follows:

> While ISI appreciates what you describe as a "show of good faith", we do not accept your offer to return to work.
>
> ISI will, as a good-faith offer, place those employees that abandoned their posts to engage in an economic strike, on a preferential hiring list, to be hired when and if a position is available.
>
> ISI takes it obligation to secure the Anchorage Federal buildings very seriously. When ISI learned, not via the Union that ISI employees were abandoning their posts, to engage in an economic strike, the Company arranged to hire permanent replacements.
>
> Mr. Reed, ISI continuous [sic] to bargain in good faith as Mr. Karawia stated in his letter of April 30, 1999, we will only negotiate through a mediator.
>
> Please direct all replacement employees to contact ISI's Anchorage office to be placed on the list, if they so wish.

On May 26 DeLong sent the following letter to the striking employees:

> This letter is to inform you that International Services, Inc. is rescinding the letter it sent to you on April 23, 1999. ISI deems that you are a striking employee of ISI and that ISI will accord you all rights as a striker under the National Labor Re-

[29] It was Cape's understanding that the Respondent was preparing for the strike and that this is why DeLong had come to town.

[30] Both Royals and Swanson testified in this proceeding and provided their account of the matter. It is significant that during the course of their testimony neither employee testified that they had been given instructions by Reed or the Union to refrain from leaving their post and participating in the strike until properly relieved.

lations Act. Any reference to your being discharged from ISI will be permanently expunged from your files.

Further, ISI presently stands ready to continue bargaining in good faith over all the terms as [sic] conditions of your employment with the UGSOA, Local 46, and hopes we can reach a mutually agreeable collective-bargaining agreement in the near future.

Lastly, ISI wants to assure you that you will receive any back overtime pay you are entitled to pursuant to the determination by the State of Alaska Department of Labor.

On May 29 White wrote to the Respondent's counsel, David Crittenden, as follows:

I received your fax and letter, informing me you are now the labor representative for International Services, Inc. Evidently your client, or at least his subordinate Richard DeLong, did not get this message. On May 26, 2 days after your representation letter, Mr. DeLong sent the Union a letter trying to eliminate a serious mistake. Mr. DeLong is "rescinding" the April 23, 1999 letter that terminated all ISI employees that are striking.

The Company sends this letter after these employees have been on strike for nearly six (6) weeks, and after refusing to pay legally due payroll checks unless all equipment was turned in and employees accept a check that referred to the check as their final payment; after the company terminated all striking guards for illegally striking for economic reasons; after they brought in untrained and unqualified "scabs" to replace qualified and experienced guards, and after refusing twice to bargain in good faith with Local #46 UGSOA.

This is a real interesting tactic after the Company has used just about every dirty trick to break the strike and turn the Federal Protective Service and General Services Administration employees against the guards and place the blame on them for the strike. I will not address that issue at this time. The National Labor Relations Board, the Department of Labor, and the Office of Inspector General for General Services Administration will sort out the relationship between ISI management, GSA Employees, and Federal Protective Service Employees.

I want to give you an opportunity to save you[r] [sic] client from further financial loss. You have a small window to get this strike settled and the guards back to work where they belong. The guards want to return to work and the occupants of the Federal Building want them back. It is up to you to convince Mr. Karawia that it will benefit him greatly to settle this himself.

The President of Local #46 is preparing a list of conditions that must be met before we will allow Mr. Karawia to settle this strike. It may already be to[o] [sic] late for him to save the contract but what has he got to loose, except more money? The same conditions exist now that did when we went on strike: sign or sign off on the operational contract he was sent in October of 1998, abide by the judgment sent him by the State of Alaska in 1997—with interest, and refrain from further unfair labor practices and bad-faith bargaining. There are also a substantial number of NLRB and U.S. Department of Labor charges that will have to be addressed.

I see five events that must take place as soon as possible:

1. All striking guards of Local #46 must be returned to work with all pay and allowances paid back to the date of the strike.
2. Money that is being held in lieu of equipment being turned in be paid immediately.
3. All scab guards must leave the building and not be allowed employment unless there is an opening after all union guards return and they meet the same qualifications as the union guards.
4. The conditions being prepared by the union local president will be dealt with as soon as possible before guards will return to work.[31]
5. You, and your company, will guarantee that all conditions agreed to by ISI are fulfilled. We will not accept the word of Mr. Karawia alone. We know there will be a time lag between agreement and accomplishment. We will accept the lag if guaranteed by you and your company. We have seen too many of Mr. Karawia's promises and/or agreements never fulfilled.

I am enclosing a copy of DeLong's letter, just in case you didn't get a copy. I hope to hear from you soon. Remember, this is a small window don't waste time.

9. Alleged conditional rehiring of Phillip Relich

Apparently on about April 28, Phillip Relich, a striking employee who had been terminated, phoned Dufresne and asked if he could return to work. Relich went to the Respondent's office and Dufresne asked him whether he would continue to participate in the strike if he was permitted to return to work, and Relich apparently said no. Dufresne asked him whether he wanted his old shift back, and Relich said yes. Then Dufresne said fine, and told him to report to Supervisor Ketchum and that he could begin working that night because he still had his uniform and equipment. He was told to return that afternoon. When he returned, Dufresne, DeLong, and Supervisor Ketchum were there. Dufresne told Ketchum that Relich was going back to work, and, according to Relich, "Ketchum said that he saw [Relich] out there on the picket line and that if they took [Relich] back they'd have to take everyone else back, too." DeLong asked him if he had been one of the strikers and whether he had been on the picket line. Relich said yes, but that he needed to go back to work. DeLong said that didn't make any difference, that Relich was one of the strikers and was fired for walking off his post. Relich replied that he had not walked off his post, as his shift had ended about 3 or 4 hours before the strike had begun that day. DeLong asked if Relich had been out front with a picket sign in his hand, and Relich said yes. DeLong said that Relich had failed to show up for work and was fired, and then, according to Relich, Delong

[31] Reed testified that he was not preparing such a list and that he did not know what White was referencing. I do not credit the testimony of Reed.

began asking questions in order to discover "some distinguishing feature between me and the other strikers" such as whether he had been pressured by the Union to join the strike. He was asked to write some statement to this effect, and would be taken back "pending the . . . company president's approval." DeLong and Relich then apparently had a discussion about the situation and DeLong attempted to explain that the Union had been misinforming the employees about important matters and was denying members critical information. He asked Relich if he knew of any other strikers who wanted to return to work. Relich was apparently told to write out a statement and that he could return to work the following night.

Relich went to the Respondent's office the following day and was given the opportunity to write out a statement. He didn't know what to write and made an excuse to leave. He returned the following day with a statement that simply said that his shift had ended 3 hours before the strike and that the Respondent's president should put something in writing that demonstrated good faith in the bargaining process; he could not think of anything negative to say about the Union. He turned this in, and later that day got a call from Dufresne who told him that this was not what DeLong expected; and he was told to come in and rewrite the statement. He did not do so. Rather, he contacted Reed who took him to the Board"s office where he gave an affidavit, and then went home. A few hours later he received a call from Dufresne who said, "Mr. Relich, you are playing games with us . . . I know you've been [to] the NLRB, I want you to turn in your uniform and pick up your final check." Relich did so. On May 18 he was reemployed by the Respondent without having to sign any statement. He was required to reapply as a new employee for the position, and was told that he would lose his prior seniority.

Delong did not testify in this proceeding. Dufresne testified that Relich came to the office during the afternoon of the day he was to begin working, and happened to remark that the Union had lied to him about certain matters. DeLong then asked him questions about the Union, and, after some discussion, asked if Relich would make a statement regarding such matters. Relich said yes, and apparently did so. He was also given an employment packet to fill out. Then Relich left, and called Dufresne a short time later stating that he needed a few days to think it over. Dufresne "blew up" and told him to turn his uniforms in, as Dufresne had already scheduled him to work that evening. Relich, according to Dufresne, had already written the statement, and Dufresne had called DeLong and told him that that the statement did not contain what had been discussed. At no time did he or DeLong tell Relich that his job was dependent upon such a statement.

10. The nature of the strike; security concerns

Reed acknowledged that during the March 12 conference call Karawia expressed concern for the safety of the people in the Federal building if the guards did not show up for work. He testified that when Perez and/or Tackett were trying to get the Union to reveal the date of the strike, he felt that it was not in the Union's best interest to furnish that information. In his Board affidavit Reed states that the Union did in fact provide advance notice of the strike in order to enable the Respondent to "get coverage of the buildings and maintain a level of security." Such notice, according to Reed, was provided by White's aforementioned April 20 letter to Karawia (which was not received until April 21) and by Reed's verbal notice to C.O.R. Cape on the morning of April 21 that the strike would commence at noon on that day. While Reed testified that he advised Dufresne the "afternoon before" the day of the strike that there would be a strike the following day, he does not mention this in his affidavit.

Reed, expressing concern for the security of the buildings and their occupants, testified that it "was most certainly our intention" not to walk out unless there were replacements lined up, and explained that indeed there would have been no strike so long as the FPS and ISI never brought replacements on board. Thus, according to Reed, the employees were not to abandon their posts and were to remain at their assigned posts until they were properly relieved, and all the Respondent had to do to prevent a strike at that time was to not have replacements available. However, this was not made known to the Respondent or FPS, and Reed had no intention of revealing the Union's intentions in this regard. According to Reed, "We would not have left our post without there being replacements."

Sturrup testified that GSA and FPS personnel were concerned about the possibility of a strike, particularly during the months of March and April, explaining that the anniversary of the Oklahoma City Federal Building bombing was approaching; and further, that there were several other ominous anniversaries of infamous individuals in March and April that bring "a lot of the kooks . . . out of the woodwork," and that this is the time when the majority of bomb threats are received. Accordingly, during March and April security is "tightened" in the sense that the security guards are reminded to be sensitive to the heightened security risk.

Jerry Cape, Criminal Investigator for the FPS and Sturrup's replacement as C.O.R. for the GSA contract, testified that the Oklahoma City bombing was the catalyst for heightened security for Federal buildings throughout the United States, and that was the reason security officers at the Anchorage Federal Building were stationed at each entrance with x-ray machines and magnetometers. Prior to this event the building had only a limited number of security officers roving the building. Cape testified that there are certain times of the year when security is heightened and that this was the case on about April 21, around the anniversary date for the Oklahoma City bombing:

> Generally, around the anniversary date for Oklahoma City. It's not due to it being the anniversary date for Oklahoma City, but other hate groups recognize that date as important to them. Hitler's birthday, things of that nature . . . . That's the date that most of these groups recognize with or associate with, so we kind of heighten security around that time frame . . . we required that the security officers be a little more vigil [sic] as to what was going on. You know, vehicles parking outside our doors and packages that were being screened, on the loading dock.

Cape testified that there are particular Federal agencies in the building "that give rise to controversy that might lead to security issues." Thus, according to Cape, Social Security receives

quite a few threats against its Administrative Law Judges and its employees; similarly, the U.S Attorney's Office, and the Environmental Protection Agency, and, to a lesser extent, the Bureau of Land Management and the Federal Aviation Administration receive threats; and further, the Federal courts located in the building, with their own security officers, are also at risk.

Both Sturrup and Cape testified that for security-related and logistical reasons the most inopportune for a strike was during noontime on a weekday, as this is when the security guards would be the busiest due to the increased traffic of employees and others entering and exiting the buildings.

C. Analysis and Conclusions

1. Preliminary statement

On August 25, the Regional Director for Region 19 of the Board approved the Union's withdrawal of its charges alleging that the Respondent violated the Act by misrepresenting to the Union the legal status of overtime provisions under the Alaska Wage and Hour Act, by misrepresenting the date for reaching of a labor contract for GSA approval, and by refusing to meet and bargain after November 3, 1998.

2. Direct dealing and threat to employees

I credit Regional Manager Dufresne and find that he did not instruct Supervisor Ketchum to advise Reed and Woods that they would be dismissed if they did not sign the original "Flexible Work Hour Plan" issued by the State of Alaska Department of Labor Wage and Hour Administration. However, I find that Ketchum, in early February, did make such a statement, whether by inadvertence or otherwise. It is alleged that this remark by Ketchum constitutes an unlawful threat to employees. The record reflects that presenting the document to the employees for their signature was understood by the Union to be an unobjectionable and even necessary formality under the circumstances and did not amount to bypassing the Union and dealing directly with the employees, as alleged. Had the form been dated differently Reed and Woods would have readily signed it, Ketchum would have made no threat, and that would have been the end of the matter. It is clear that the alleged threat was the result of a miscommunication and misunderstanding regarding the document to which Reed was willing to give "his blessing" if properly dated. In fact, it **was** properly dated, but the form was confusing because it bore a 1997 date that, under the circumstances, caused Reed and Woods to believe that perhaps they would be jeopardizing their entitlement to back overtime pay by signing it; therefore, they simply refused to sign it. The situation was clarified within a short time when both Reed and Woods willingly signed the identical but currently-dated form. It appears that this was a rather innocuous matter that was readily rectified; there is no evidence of other similar or related conduct, and the employees involved, having been presented with a form to their liking, must have realized that no threat was intended and that the Respondent was merely attempting to comply with ADOL requirements. I believe that under the circumstances the matter is de minimus and that no finding of a violation is warranted. I shall dismiss this allegation of the complaint.

3. Request for information

Regarding Local President Reed's February 26 request for information concerning the medical/401(k) plan, it is clear that many employees were very concerned about various aspects of these interrelated plans. Having been frustrated in their own attempts to understand the convoluted system, they wanted their bargaining representative to pursue the matter. While the Union and each employee, upon being hired, had been given booklets describing the operations of the plan, the employees were having difficulty in obtaining details regarding their personal accounts, and this, in part, is precisely what Reed requested in his February 26 letter. I credit the testimony of Karawia and find that in fact only the plan administrator and not the Respondent had access to such information.

During the March 12 conference call and in various subsequent written communications the Respondent urged the Union to resume bargaining negotiations. Had such negotiations occurred, the Union could have utilized the opportunity, had it still been interested, to reiterate its request for such information and the matter could have been discussed in order to facilitate the furnishing of the information, to the extent it was not confidential, by the plan administrator to the Union since, as noted, the Respondent did not possess such information. However the Union delayed further bargaining negotiations by making conditional demands before it would agree to return to the bargaining table, thereby foreclosing for itself the opportunity to discuss this or any other issues. Accordingly, as the Union's tactics prevented further bargaining discussions, and as such discussions could have included any matters of interest to the Union, I shall dismiss this allegation of the complaint. *Silver Bros. Co.*, 312 NLRB 1060, 1061–1062 (1993).

4. Removal of Reed from the contract

I find that the removal of Reed from the GSA contract on March 22 was not discriminatorily motivated. It is clear that both Reed and Ketchum, under the specific terms of the GSA contract, should not have been hired because they lacked one of the essential qualifying requirements. This was pointed out to the Respondent and to the FPS in then C.O.R. Sturrup's March 12 memorandum, which set forth the results of an audit of unit employees' qualifications that was for some unknown reason requested not by the Respondent, but by Local Union President Reed himself. Thereafter, Reed and Ketchum were given the opportunity to furnish pertinent college transcripts showing that they had certain alternative qualifications, but they were unable to do so. I credit the testimony of Dufresne and Karawia and find that at the time it was difficult to hire or retain security guards who possessed the qualifications required by the GSA contract, and that the Respondent did not want to compound the problem by discharging two employees. Thus, Reed was not singled out, as the discharge of Reed also mandated the discharge of Supervisor Ketchum; and there is no record evidence showing that at the time the Respondent was aware that in fact Ketchum happened to be a very active supporter of the Union.

I credit the testimony of Karawia and find that he perceived the March 12 memorandum to be, in effect, a directive from GSA that the Respondent take certain action, and that it was virtually impossible to obtain an ex post facto contract modifi-

cation. In any event, Karawia did not need to seek one, as he was advised that C.O.R. Sturrup himself was seeking such a modification. At no time did Karawia express any opposition to the proposed contract modification which would result in the retention of both Reed and Ketchum. Meanwhile, however, as far as Karawia was concerned, the Respondent was required to adhere to the specific provisions of the governing GSA contract which, by its terms, precluded the Respondent from employing unqualified guards such as Reed and Ketchum. And during this time neither Perez nor Tackett nor Sturrup nor anyone from FPS or GSA instructed or even suggested that the Respondent delay or refrain from removing Reed or Ketchum until after Sturrup's request for a modification was acted upon, either favorably or unfavorably, by Tackett. Insofar as the record shows, Karawia did not know whether the modification would be issued in a day, a month, or, given his other dealings with the government, considerably longer; or whether in fact the modification request would be denied as he believed it would be. Thus, while GSA did not demand, by means of a cure notice or otherwise, that Reed and Ketchum be removed from the contract, neither did GSA or FPS advise Karawia to the contrary. Karawia simply did what he believed to be required and most appropriate under the circumstances, namely, comply with the GSA contract.

Moreover, it is significant that Reed believed he was "negotiating" his reinstatement with Sturrup, thus indicating that Reed understood the matter was really between Reed and GSA and that the Respondent was, in effect, a disinterested third party; thus, at that point Reed was not negotiating with the Respondent to get his job back because he understood that the Respondent had no control over GSA's decisionmaking process.[32]

The Respondent took its contractual obligations very seriously, and Dufresne received a severe written reprimand "up to and including termination" should he again fail to abide by the contract by hiring personnel who did not meet the minimum requirements, and thereby causing "irreparable damage to ISI's relationship with GSA." Similarly, GSA took the matter very seriously and demoted Sturrup from his position as C.O.R. for permitting the Respondent to hire these individuals in the first instance. The situation was significant, all other employees had the requisite qualifications, and the modification was not merely a technical change to correct an inadvertent oversight.[33]

Nor was the removal of Reed and Ketchum from the contract a "discharge" from the Respondent's employ, as these individuals were offered other positions during the time GSA was considering the modification; thus, when or if the modification was granted both Reed and Ketchum could have been readily returned to employment under the contract. Further, Karawia did not procrastinate, but immediately signed and returned the modification document to GSA as a result of which Reed and Ketchum were forthwith returned to work. Finally, there is no other evidence showing that the Respondent harbored animus against Reed. On the basis of the foregoing I find that the General Counsel has not demonstrated that the 1-day removal of Reed from the contract was discriminatorily motivated, as alleged, and I shall dismiss this allegation of the complaint.

5. The unprotected nature of the strike

I find that the April 21 strike was unprotected as it was designed to compromise both the security of the Federal buildings and the occupants of these buildings, and I further find that the security guards who engaged in the strike were lawfully discharged. During the March 12 conference call the union representatives considered it to be, in effect, a conspiracy by the Respondent and GSA to attempt to ascertain any details regarding the threatened strike. Tacket's repeated requests to be so advised were thwarted by White and Reed with vitriolic invective and outrage at GSA's involvement in this matter. This is demonstrated by testimonial accounts of the conference call, by the Union's subsequent letter, and, in addition, I find, by the destruction of the tape recording of the conference call that the Union made in order to show such complicity by the Respondent and GSA. I do not credit Reed, who testified that he destroyed the tape recording because he feared that it was perhaps unlawful to record such a conversation. This does not make sense, as he admitted during his testimony that he recorded the conversation, and it is not the physical tape itself but rather the recording of the conversation that is potentially actionable. Rather, I find that Reed destroyed the tape recording because it presented in explicit detail the unprofessional and total disregard that the Union had for in any manner assisting GSA or the Respondent to prepare for and maintain security in the event of a strike, and supported and enforced the argument, made by the Respondent, that the Union was not the least concerned about the Federal buildings or their occupants or anything other than its own agenda, namely, obtaining a wage increase that it understood it could not get from the Respondent without GSA's involvement.[34]

The events surrounding the strike that Reed had planned for about March 23 are instructive. After March 12 Reed had prepared the union members for a strike in the event that he and Ketchum were dismissed. The strike was to commence at 12 noon on March 23 if Reed and Ketchum were not reinstated by that time. No notice whatsoever of this imminent strike was given to the Respondent, and it was not until that very morning that Reed first told Sturrup during their "negotiations" that there would be a strike at noon that day unless the modification was approved forthwith. According to the testimony of one union member it was understood the Respondent was not to be

[32] Had a strike occurred, although nominally a strike against the Respondent, in actuality it would have been a strike against GSA for failing to issue the modification. Similar secondary boycott considerations are also applicable to the April 21 strike, as the Respondent could not raise its wages without GSA approval; however such issues were not raised at the hearing.

[33] Having carefully considered the testimony of Perez and Sturrup I find that they were discretely downplaying the role that the potential strike played in GSA's granting of the modification, and absent the strike threat I find it highly unlikely, in agreement with Karawia, that such a modification would have been requested by Sturrup or granted by Contracting Officer Tackett.

[34] In this regard it is interesting that the Union, throughout its various inconsistent communications, vehemently objects to GSA's involvement in labor matters and at the same time elicits GSA's assistance in securing a wage increase.

advised of any strike and that Reed would schedule the strike at the "most inopportune time for ISI and FPS," namely, when FPS officers were not available "so they couldn't help fill in when we went on strike."

It is clear from the record that post abandonment by security guards is universally considered to be serious conduct warranting immediate termination. I do not credit Reed's testimony to the effect that the security guards were instructed not to walk out and leave their posts unguarded. I find that this was untrue and self-serving testimony that Reed believed was critical to his case in order to demonstrate that the Union had no intention of compromising security by post abandonment. While many union members testified on behalf of the Union in this proceeding regarding the strike and other matters, not one corroborated this testimony of Reed. Clearly, because of the importance of this issue to the determination of the protected or unprotected nature of the strike, I find the absence of such corroborating evidence to be highly significant.[35]

Further, Reed was angry with the three security guards at the FBI building who had advised Reed that they considered a strike on about March 23, which would compromise the security of the building and its occupants, to be particularly inappropriate at the time. As noted above, several memoranda regarding this matter were submitted to the Respondent, and one such memorandum states that the reason the security guards at the FBI building had refused to strike at the time Reed had intended to call the strike was "due to a major conference that was ongoing [sic] that morning. A strike would severely embarrass the FBI's Senior Agent in Charge, and be a major security risk to 50 major law enforcement and military officials." Reed knew this, and had he been genuinely concerned with building security he would have taken this opportunity to allay the concerns of the security guards by instructing them that they were indeed not expected to walk off and leave their posts unguarded. However, insofar as the record shows, Reed's reaction to the expressed concern of the guards was one of hostility and anger coupled with the admonition, "You don't run fucking union business."[36] As one concerned union member testified, "I felt that the way that they were dealing with things was unprofessional. I felt that the way they were leading it was going to eventually end up and get everyone fired, [a]nd it was something I decided I wasn't going to support."

From the foregoing it is clear that Reed was prepared to call a strike at noon on March 23 without any notice whatsoever to the Respondent, with only minimal notice to the FPS (which notice was only incidental to Reeds threat to Sturrup that a strike would begin at noon that day unless the modification was approved), and with no prior instructions to union members that they were not to abandon their posts until relieved by replacements. This, I conclude, demonstrates that the Union, through Reed, who had been given sole discretion to call a strike at the most opportune time, was willing to compromise the security of the buildings and their occupants by postabandonment in furtherance of Reed's agenda.

The April 21 strike was called by Reed without notice to the Respondent and with minimal notice to FPS. I do not conclude that the "deadline" given to the Respondent in White's April 20 letter (received by the Respondent on April 21) constituted appropriate notice of a strike, as the Union had formerly presented the Respondent with many alleged "deadlines" and the Respondent could reasonably believe that this was simply a continuation of the Union's rather unorthodox and unprofessional way of doing business. Nor do I credit Reed's testimony that he advised Dufresne of the strike on the afternoon of April 20. Rather, I credit Dufresne and the corroborating testimony of Cape, and find that Dufresne received no such notice from Reed. This testimony by Reed is significant, as was his similarly discredited testimony regarding the postabandonment matter, because it demonstrates that Reed, upon reflection, has since come to the realization that in fact the Union should have indeed provided the Respondent an opportunity to prepare for the strike, and/or should have instructed the guards that they were not to leave their posts and join the strike until properly relieved by replacements.

The General Counsel's argues, in effect, that the potential danger was minimal, that there were in fact replacements for the strikers and therefore no post abandonment, and, as it turned out that there was no harm to persons or property, the strike did not lose its protected nature. The Respondent argues that the fact that the guards' posts, for the most part, were timely covered by a combination of nonstriking guards, FPS personnel, and armed replacements from the Respondent's other accounts demonstrates the Respondent's quick response to a critical situation; but this fortuitous circumstance does not alter the fact that the Union did not know at the time the strike was called that such replacements were available, that the Union gave no notice whatsoever to the Respondent, and that the Respondent had sufficient reason to believe that it was the Union's intention to have the guards leave their posts regardless of the presence of any replacements, just as it was prepared to do on March 23; accordingly, the employees were lawfully discharged for post abandonment. In addition, the Respondent argues that an after-the-fact analysis that the strike did not lose its protected nature because no harm befell anyone is premised upon an unsound and insupportable rationale. I agree with the positions of the Respondent.

The right to strike is not absolute. In *Marshall Car Wheel & Foundry Co.*, 107 NLRB 314 (1953), the Board states:

> In cases involving supervisory and plant-protection employees, the Board has recognized the validity of the general principal that the right of certain classes of employees to engage in concerted activity is limited by the duty to take reasonable precautions to protect the employer's physical plant from such imminent damage as foreseeably would result from their sudden cessation of work. We are of the opinion that this duty extends as well to ordinary rank-and-file employees whose work tasks are such as to involve responsibility for the prop-

[35] Two employees, namely Vernon Tolson, the local union vice-president, and Jerry Hatcher, the local union treasurer, were personally concerned about leaving their posts unattended: Hatcher spoke to Cape prior to being relieved and Tolson called the director of social security (at the building where he was stationed) and informed him that he (Tolson) was leaving; however neither employee testified that he was acting pursuant to any instructions by Reed or the Union.

[36] I do not credit Reed's assertion that he did not use this language.

> erty which might be damaged. Employees who strike in breach of such obligation engage in unprotected activity for which they may be discharged or subjected to other forms of discipline affecting their employment conditions.

The General Counsel relies upon the Board's decision in *Federal Security, Inc.*, 318 NLRB 413 (1995), enf. denied 154 F.3d 751 (10th Cir., 1998). In that case armed security guards, working for a private security firm who were assigned to guard posts at a multiresidence public housing site administered by the Chicago Housing Authority (CHA), walked off the job after giving their employer only about 2-hours notice. Their dismissal by the employer was found to be violative of the Act. The administrative law judge in that proceeding, at page 421, analyzed the issue as follows:

> Finally, the Respondent contends that the walkout was unprotected because it compromised the safety of the residents of CHA properties and that of nonstrikers who were left alone at some locations. There is no evidence that any harm resulted from the fact that certain building posts were left unmanned for a brief period on August 11th. According to the testimony of Chief Tackett, once the walkout began at 10 a.m. it took only 20 minutes to cover every post that had been walked off . . . I find that the strikers acted reasonably in giving the Respondent adequate notice of the walkout sufficiently far in advance that it could have taken the necessary steps to see that no post was uncovered at any time. Accordingly, their actions did not lose the protection of the Act. *Columbia Portland Cement Co.*, 294 NLRB 410, 421–422 (1989).

The Board, in a two to one decision, Member Truesdale dissenting, affirmed the decision of the administrative law judge without further analysis of the nature of the walkout. Member Truesdale, in his dissent, footnote 2, states that he

> would find that in light of the security guards' duties and the nature of the facilities at which they worked and, in the circumstances of this case, the inadequacy of the notice given, their walkout was not protected because it compromised the safety of the residents of the CHA properties and of the nonstrikers who were left alone at some locations.

The Tenth Circuit refused to enforce the Board's Order, stating, inter alia, as follows:

> For our purposes it is enough to say that otherwise protected activity surely loses its protection when it compromises the safety of others; the Act permits employees to exercise self help, but not in a reckless way.
>
> . . . .
>
> The next question is how critical was the protection the protesting guards refused to give? The answer is in record evidence undisputed by the parties but largely unmentioned by the ALJ. The guards carry guns and were slated to wear bulletproof vests.[37] They patrol the buildings around the clock. They monitor all guests who enter and all who exit. These were buildings designated as high-crime areas to begin with, which is why they had been "swept" by the Chicago Police Department and then sealed with only one passage in and out. The guards are more than a presence; they are a deterrent. Their presence at every building (stationed at each passage at all hours) demonstrates that the CHA views them as vital and critical. And when they walked out of the Robert Taylor Homes, they did so conspicuously, literally parading across the complex, recruiting others to join the march, in full view of the residents (and perhaps more importantly, in view of those from whom the residents are to be protected). They took guns and radios with them (the radios are supposed to be left behind for the next guard on a post so he can communicate with the front office); the guards left at least four buildings unattended. In addition, they gave almost no warning to Federal [the employer] (calling 90 minutes ahead and leaving work with a "dispatcher" is at best a token gesture), and no consensus to a reason—at least until after the walkout, when for the first time they thought it best to draft a list of tangible demands . . . . Were they endangering the lives of the residents and the unaccompanied guards they left behind by walking out in that manner? We must agree with Member Truesdale that the only reasonable answer is yes.
>
> The ALJ extended the Act's protection to the striking guards principally because he found no harm resulted from the walkout. Our review of the record casts doubt on that conclusion, but we need not decide the issue because we reject the AlJ's focus. Whether actual harm resulted is hindsighted and irrelevant. The proper focus is that the unguarded stations unquestionably heightened the danger to residents. If harm ultimately was avoided, it is to the credit of Federal's quick response to the crisis; we see no reason why the conduct of the guards should be exempted because of such diligence. The "health and safety" exception does not ask whether anyone actually was harmed by the activity otherwise protected; it asks whether the activity endangered anyone to the point that harm was foreseeable. For the unguarded residents (and guards left without partners) that day, 20 minutes was long enough to place them is serious danger . . . . The record brought the area to life well enough for us to decide that the guards in this case exposed residents to heightened danger when they abruptly abandoned their posts, a conclusion that makes their conduct unprotected under the NLRA and their discharges lawful. Enforcement denied.

Security guards, such as those involved in this proceeding, are entrusted with critical responsibilities and it is reasonable to require that unions representing such guards conduct their affairs in a responsible, professional manner with sufficient regard for the safety and security of the persons and property their members are hired to protect. While security guards and the Unions representing them may be required to forego to some extent the tactical element of surprise and potentially lessen the immediate impact of a strike against an employer, the Board requires such an accommodation to the interests of safety

[37] Similarly, in the instant case, the Union requested that the Respondent furnish the guards with bulletproof vests because of the dangerous nature of their duties.

and security;[38] this is just a common sense approach to a deadly serious matter. As the application of this policy is dependent upon the circumstances in each instance, and only the Union knows when it will strike, it must be incumbent upon the Union to act reasonably and responsibly by giving the employer sufficient specific advance notice of such strike. It is not adequate to simply threaten a strike at some indefinite and "most opportune" point in the future, as this would effectively nullify the very purpose of the notification requirement and, as a practical matter, is meaningless, as every union in every bargaining situation retains the right to strike in its arsenal of economic weapons and the "threat" of a strike, whether articulated or not, is always implicit.

As noted above, the date and time the Union designated for the strike was most opportune in respect to the ends it hoped to accomplish, but most inopportune with respect to public safety. There is no evidence in this proceeding that the Union had given any consideration whatsoever to the public safety; nor is there any showing that either the International Union or the Local Union had any established policy or guidelines respecting strikes by security guards that would provide some reasonable accommodation and balance between the Union's right to strike and the protection of the public. There was no notice to the Respondent and grossly inadequate notice to FPS; the Union attempted to capitalize on the element of surprise knowing that it was very difficult, within a few hours, to obtain the services of qualified replacement security guards licensed to carry firearms and capable of operating x-ray equipment and magnetometers with any degree of competence; and, contrary to the discredited testimony of Reed, the Union did not instruct its members to remain at their posts until replacements had properly relieved them. Accordingly, I find that the Union acted irresponsibly, unprofessionally and recklessly by striking as it did because it potentially exposed people and property to foreseeable danger. I therefore conclude that the April 21 strike was unprotected and that the discharge of the strikers on about April 23 for post abandonment was not unlawful. I shall dismiss this allegation of the complaint. *Marshall Car Wheel & Foundry Co*, supra, *Federal Security, Inc.*, supra.

6. The strike was an economic strike; the hiring of permanent replacements

It is clear and I find that the strike was an economic strike and not an unfair labor practice strike.[39] Prior to the strike the Union presented the Respondent with two lists of demands and threatened to strike if these demands were not met. The demands, which are set forth in White's April 4 and 21 letters, were not met and the Union struck. I have found that the Respondent committed no unfair labor practices prior to the strike, and, further, the Union's demands do not even refer to any unfair labor practice alleged in the complaint. I do not credit the testimony of Reed that he did not necessarily agree with the content of White's letters and that the Union struck for reasons other than those White specifically listed in his letters. Further, as noted above, White, who had sole responsibility for negotiations, did not appear at the hearing and did not testify that his letters were inaccurate or that there were additional reasons for the strike that he neglected to list in his letters.

Abundant record evidence demonstrates that subsequent to about April 23, after the strikers had been discharged and the emergency situation became normalized, the Respondent commenced to hire permanent replacements and specifically told each of the replacements that his or her position with the Respondent was permanent. The replacements relied upon such assurances in accepting the positions. I so find.

7. Delaying the rehire of Relich in violation of Section 8(a)(1) and (3)

Because the Respondent was in need of striker replacements it agreed to rehire Relich as a new employee. While the scenario is not entirely clear, it appears that the immediate rehire of Relich on about April 28 was delayed for as much as several weeks as a result of the Respondent's indecisiveness regarding his reinstatement. Relich simply wanted to return to work without having to provide any negative information regarding the Union. Dufresne was agreeable, but Delong, on behalf of the Respondent, wanted Relich to first write out a statement that would distinguish Relich from the other strikers. The complaint alleges that the Respondent placed unlawful conditions upon the rehire of Relich. While Relich's ultimate rehire was not conditioned upon his denouncement of the Union, it does appear that his rehire was delayed because the Respondent wanted some type of union-related statement from him that would warrant his rehire. The record evidence clearly reflects Relich's dilemma: Thus, for financial reasons he found it necessary to return to work, but he was concerned about compromising his loyalty to the Union and, in addition, he harbored a degree of fear that Reed and perhaps others would make things very difficult for him if he crossed the picket line. I find that by delaying the rehire of Relich because of his procrastination in furnishing a statement that, even if accurate, could possibly exacerbate his already tenuous relationship with the Union, the Respondent has violated Section 8(a)(1) and (3) of the Act as alleged.[40]

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

[38] *Marshall Car Wheel & Foundry Co.*, supra.

[39] Had the strike not been an unprotected strike, as found above, then the discharge of the employees for post abandonment would have been unlawful and the economic strike would have thereby been converted into an unfair labor practice strike from April 23 until such time as the Respondent rescinded the discharges; thus, the employees would have been entitled to backpay from May 16, the date the Union offered to return the employees to work, until May 26, the date the Respondent rescinded the discharges and thereby converted the unfair labor practice strike to an economic strike.

[40] The matter of Relich's going to the Board's offices to give a statement is not alleged as a reason for the delay in Relich's rehire, and Dufresne's remark about "playing games" seems to merely reflect bewilderment with Relich's procrastination in failing to provide the statement that he had willingly agreed to provide in the first instance.

3. The Respondent has violated Section 8(a)(1) and (3) of the Act only as set forth herein.

THE REMEDY

Having found that the Respondent has violated and is violating Section 8(a)(1) and (3) of the Act, I recommend that it be required to cease and desist therefrom and from in any other like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. Further, the Respondent shall be required to make employee Phillip Relich whole for any loss of wages or benefits he may have suffered by reason of the Respondent's delay in rehiring him in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, the Respondent shall be required to post an appropriate notice, attached hereto as "Appendix."

[Recommended Order omitted from publication.]